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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 34

GEORGE HARRIS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 28, 1945.

CERTIORARI GRANTED JUNE 10, 1946.

United States Circuit Court of Appeals

TENTH CIRCUIT

No. 3105

GEORGE HARRIS, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA.

FILED APRIL 3, 1945.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Tenth Circuit, at the September Term, 1945, of said Court, before Honorable Alfred P. Murrah, Circuit Judge, and Honorable Eugene Rice and Honorable Royce H. Savage, District Judges.

On the 3rd day of April, A. D. 1945, a transcript of the record, pusuant to a notice of appeal, filed in the District Court of the United States for the Western District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Tenth Circuit, in a certain cause wherein George Harris was appellant, and United States of America was appellee, which said transcript, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Tenth Circuit, is in the words and figures following:

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE STEPHEN S. CHANDLER, JR., JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

UNITED STATES OF AMERICA, PLAINTIFF,

v.

GEORGE HARRIS, DEFENDANT.

No. 14695

Indictment.

Violation: Section 100, Title 18, U.S.C.A. Section 101, Title 18, U.S.C.A. Section 311, Title 50, App. U.S.C.A. Selective Service Act of 1940 Regulations 623.61-2.

1 At the January 1944 Term of the District Court, of the United States for the Western District of Oklahoma, begun and held at city of Oklahoma City in said district, on the 3d day of January in the year of our Lord one thousand nine hundred forty-four the Grand jurors of the United States of America, within and for said District, having been duly summoned, impaneled, sworn, and charged to inquire into and true presentment make of all public offenses against the laws of the United States of America, committed within said District in said State of Oklahoma, upon their oath aforesaid, in the name and by the authority of the United States of America, find and present:

Count One.

Theft of Government Property.

2 That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, Oklahoma County, in the Western District of the State of Oklahoma and with-

in the jurisdiction of this Court, one George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, willfully, knowingly, fraudulently and feloniously take, steal and purloin eight (8) Notice of Classification cards DSS Form 57 and eleven (11) blank Registration Certificates, DSS Form 2, from the offices of Local Draft Board No. 7 of Oklahoma County, Oklahoma, located at 825 Cotton Exchange Building, Oklahoma City, then and there being the property of the United States of America, and furnished and to be used by Local Draft Board No. 7 Oklahoma County, Oklahoma, with the intent on the part of said George Harris to convert the same to his own use and benefit and to deprive the United States permanently thereof:

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Two.

Receive and Conceal Government Property.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact date being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, Oklahoma County, in the Western District of the State of Oklahoma and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, willfully, knowingly, fraudulently and feloniously conceal eight (8) Notice of Classification cards DSS Form 57 and eleven (11) Registration Certificates, DSS Form 2, property of the United States Government, sealed in an envelope on which he had written: "George Harris Personal Papers", and hidden in the second drawer of a small bureau in a bedroom of an apartment occupied by George Harris at 2308 Northwest Edison Street, Oklahoma City, Oklahoma, which said property had been stolen or purloined from Local Draft

Board No. 7, Oklahoma City, Oklahoma County, Oklahoma, which the said George Harris knew at all of the times said property was concealed by him;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Three.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact date being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, Oklahoma County, in the Western District of the State of Oklahoma and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, willfully, knowingly, fraudulently and feloniously have and retain in his possession, with the intent to convert to his own use and gain, eight (8) Notice of Classification cards DSS Form 57 and eleven (11) Registration Certificates DSS Form 2, property of the United States Government, sealed in an envelope on which he had written, "George Harris Personal Papers"; and hidden in the second drawer of a small bureau in a bedroom of an apartment occupied by George Harris at 2308 Northwest Ellison Street, Oklahoma City, Oklahoma, which said property had been stolen or purloined from Local Draft Board No. 7, Oklahoma City, Oklahoma County, Oklahoma, which the said George Harris knew at all the times said property was retained by him;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Four.

And the Grand Jurors aforesaid, upon their oaths, in the name and by authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, Oklahoma County, in the Western district of the State of Oklahoma and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, willfully, knowingly, fraudulently and feloniously falsely make, alter, forge or counterfeit a Notice of Classification card DSS Form 57, property of the United States Government, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof, by stamping on said card the following words:

4 Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

without the knowledge and consent of the United States Government, or Local Draft Board No. 7 of Oklahoma County, Oklahoma, thus and thereby falsely altering, forging and counterfeiting said Notice of Classification card, DSS Form 57, inasmuch as the stamping thereon of said words and figures was incorrect, inaccurate and was not the correct words and figures in use by said board for stamping said card;

Contrary to the Selective Service Act of 1940 and the amendments thereto, together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count Five.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the *authority* of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, Oklahoma County, in the Western District of the State of Oklahoma and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then

and there being, did then and there unlawfully, willfully, knowingly, fraudulently and feloniously falsely make, alter, forge or counterfeit a Notice of Classification card DSS Form 57, property of the United States Government, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof, by stamping on said card the following words:

Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

without the knowledge and consent of the United States Government, or Local Draft Board No. 7 of Oklahoma County, Oklahoma, thus and thereby falsely altering, forging and counterfeiting said Notice of Classification card, DSS Form 57, inasmuch as the stamping thereon of said words and figures was incorrect, inaccurate and was not the correct words and figures in use by said board for stamping said card;

Contrary to the Selective Service Act of 1940 and the amendments thereto, together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count Six.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, Oklahoma County, in the Western District of the State of Oklahoma and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown then and there being, did then and there unlawfully, willfully, knowingly, fraudulently and feloniously falsely make, alter, forge or counterfeit a Notice of Classification card, DSS Form 57, property of the United States Government, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof, by stamping on said card the following words:

Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

without the knowledge and consent of the United States Government, or Local Draft Board No. 7 of Oklahoma County, Oklahoma, thus and thereby falsely altering, forging and counterfeiting said Notice of Classification card, DSS Form 57, inasmuch as the stamping thereon of said words and figures was incorrect, inaccurate and was not the correct words and figures in use by said board for stamping said card;

Contrary to the Selective Service Act of 1940 and the amendments thereto, together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count Seven.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, Oklahoma County, in the Western District of the State of Oklahoma and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, willfully, knowingly, fraudulently and feloniously make, alter, forge or counterfeit a Notice of Classification card, DSS Form 57, property of the United States Government, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof, by stamping on said card the following words:

Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

without the knowledge and consent of the United States Government, or Local Draft Board No. 7 of Oklahoma County, Oklahoma, thus and thereby falsely altering, forging and

counterfeiting said Notice of Classification card, DSS Form 57, inasmuch as the stamping thereon of said words and figures was incorrect, inaccurate and was not the correct words and figures in use by said board for stamping said card;

Contrary to the Selective Service Act of 1940 and the amendments thereto, together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count Eight.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, Oklahoma County, in the Western District of the State of Oklahoma and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unalwfully, willfully, knowingly, fraudulently and feloniously falsely make, alter, forge or counterfeit a Notice of Classification card, DSS Form 57, property of the United States Government, a copy of which is hereto attached, marked Exhibit "A", and made a part hereof, by stamping on said card the following words:

Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

without the knowledge and consent of the United States Government, or Local Draft Board No. 7 of Oklahoma County, Oklahoma, thus and thereby falsely altering, forging and counterfeiting said Notice of Classification card DSS Form 57, inasmuch as the stamping thereon of said words and figures was incorrect, inaccurate and was not the correct words and figures in use by said board for stamping said card;

7 Contrary to the Selective Service Act of 1940 and the amendments thereto, together with the rules and

regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count Nine.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, Oklahoma County, in the Western District of the State of Oklahoma and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, willfully, knowingly, fraudulently and feloniously falsely make, alter, forge or counterfeit a Notice of Classification card, DSS Form 57, property of the United States Government, a copy of which is hereto attached, marked Exhibit "A", and made a part hereof, by stamping on said card the following words:

Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma.

without the knowledge and consent of the United States Government, or Local Draft Board No. 7 of Oklahoma County, Oklahoma, thus and thereby falsely altering, forging and counterfeiting said Notice of Classification card, DSS Form 57, inasmuch as the stamping thereon of said words and figures was incorrect, inaccurate and was not the correct words and figures in use by said board for stamping said card;

Contrary to the Selective Service Act of 1940 and the amendments thereto, together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count Ten.

And the Grand Jurors aforesaid, upon their oaths, in the

name and by the authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, Oklahoma County, in the Western District of the State of Oklahoma and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown,
8 then and there being, did then and there unlawfully, knowingly, fraudulently and feloniously falsely make, alter, forge or counterfeit a Notice of Classification card, DSS Form 57, property of the United States Government, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof, by stamping on said card the following words:

Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

without the knowledge and consent of the United States Government, or Local Draft Board No. 7 of Oklahoma County, Oklahoma, thus and thereby falsely altering, forging and counterfeiting said Notice of Classification card, DSS Form 57, inasmuch as the stamping thereon of said words and figures was incorrect, inaccurate and was not the correct words and figures in use by said board for stamping said card;

Contrary to the Selective Service Act of 1940 and the amendments thereto, together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count Eleven.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indict-

ment, at Oklahoma City, Oklahoma County, in the Western District of the State of Oklahoma and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, willfully, knowingly, fraudulently and feloniously falsely make, alter, forge or counterfeit a Notice of Classification card, DSS Form 57, property of the United States Government, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof, by stamping on said card the following words:

Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

without the knowledge and consent of the United States Government, or Local Draft Board No. 7 of Oklahoma County, Oklahoma, thus and thereby falsely altering, forging and counterfeiting said Notice of Classification card, DSS Form 57, inasmuch as the stamping thereon of said words and figures was incorrect, inaccurate and was not the correct words and figures in use by said board for stamping said card;

Contrary to the Selective Service Act of 1940 and the amendments thereto, together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count XII.

9 And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present;

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, in Oklahoma County, in the Western District of the State of Oklahoma and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously have and retain

in his possession, with the intent to utter or publish as true, a falsely altered, forged or counterfeited Notice of Classification card DSS Form 57, copy of which is hereto attached, marked "Exhibit A" and made a part hereof, in that said card had stamped thereon the following words and figures:

Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

which said words and figures were incorrect, inaccurate and not the words and figures used by said Board on Notice of Classification cards:

Contrary to the Selective Service Act of 1940 and the amendments thereto, together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count XIII.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, in Oklahoma County, in the Western District of the State of Oklahoma, and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously have and retain in his possession, with the intent to utter or publish as true, a falsely altered, forged, or counterfeited Notice of Classification card DSS Form 57, copy of which is hereto attached, marked "Exhibit A" and made a part hereof, in that said card had stamped thereon the following words and figures:

Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

which said words and figures were incorrect, inaccurate

and not the words and figures used by said Board on Notice of Classification cards;

Contrary to the Selective Service Act of 1940, and the amendments thereto together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count XIV.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, in Oklahoma County, in the Western District of the State of Oklahoma, and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously have and retain in his possession, with the intent to utter or publish as true, a falsely altered, forged, or counterfeited Notice of Classification card DSS Form 57, copy of which is hereto attached, marked "Exhibit A" and made a part hereof, in that said card had stamped thereon the following words and figures:

Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

which said words and figures were incorrect, inaccurate and not the words and figures used by said Board on Notice of Classification cards;

Contrary to the Selective Service Act of 1940, and the amendments thereto together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count XV.

11 And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, in Oklahoma County, in the Western District of the State of Oklahoma, and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously have and retain in his possession with the intent to utter or publish as true, a falsely altered, forged, or counterfeited Notice of Classification card DSS Form 57, copy of which is hereto attached, marked "Exhibit A" and made a part hereof, in that said card had stamped thereon the following words and figures:

Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma.

which said words and figures were incorrect, inaccurate and not the words and figures used by said Board on Notice of Classification cards;

Contrary to the Selective Service Act of 1940, and the amendments thereto together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count XVI.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present;

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, in Oklahoma County, in the Western District of the State of Oklahoma, and within the jurisdiction of this Court, George Harris, whose more full, true

and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously have and retain in his possession with intent to utter or publish as true, a falsely altered, forged or counterfeited Notice of Classification card DSS Form 57, copy of which is hereto attached, marked "Exhibit A" and made a part hereof; in that said card had stamped thereon the following words and figures;

12 Local Board No. 7 of Oklahoma County 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

which said words and figures were incorrect, inaccurate and not the words and figures used by said Board on Notice of Classification cards;

Contrary to the Selective Service Act of 1940, and the amendments thereto together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Count XVII.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present:

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, in Oklahoma County, in the Western District of the State of Oklahoma, and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously have and retain in his possession with intent to utter or publish as true, a falsely altered, forged, or counterfeited Notice of Classification card DSS Form 57, copy of which is hereto attached marked "Exhibit A" and made a part hereof, in that said card had stamped thereon the following words and figures;

Local Board No. 7 of Oklahoma County, 84, 825 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

which said words and figures were incorrect, inaccurate and

not the words and figures used by said Board on Notice of Classification cards;

Contrary to the Selective Service Act of 1940, and the amendments thereto together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America;

Count XVIII.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present;

13 That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment, at Oklahoma City, in Oklahoma County, in the Western District of the State of Oklahoma, and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously have and retain in his possession with intent to utter or publish as true, a falsely altered, forged, or counterfeited Notice of Classification card DSS Form 57, copy of which is hereto attached marked "Exhibit A" and made a part hereof, in that said card had stamped thereon the following words and figures;

Local Board No. 7 of Oklahoma County, 84, 823 Cotton Exchange Bldg., Oklahoma City, Oklahoma,

which said words and figures were incorrect, inaccurate and not the words and figures used by said Board on Notice of Classification cards;

Contrary to the Selective Service Act of 1940, and the amendments thereto together with the rules and regulations issued *purasant* thereto, and the statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America;

Count XIX.

And the Grand Jurors aforesaid, upon their oaths, in the name and by the authority of the United States of America, do further find and present;

That on or about the 20th day of July, 1944, or prior thereto, the exact time being to the Grand Jurors unknown, but all within three years of the return date of this indictment at Oklahoma City, in Oklahoma County, in the Western District of the State of Oklahoma, and within the jurisdiction of this Court, George Harris, whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously have and retain in his possession with intent to utter or publish as true, a falsely altered, forged or counterfeited Notice of Classification card DSS Form 57, copy of which is hereto attached marked "Exhibit A" and made a part hereof, in that said card had stamped thereon the following words and figures;

14 Local Board No. 7 of Oklahoma County, 84, 825
Cotton Exchange Bldg., Oklahoma City, Oklahoma,

which said words and figures were incorrect, inaccurate and not the words and figures used by said Board on Notice of Classification cards;

Contrary to the Selective Service Act of 1940, and the amendments thereto together with the rules and regulations issued pursuant thereto, and the statutes of the United States in such case made and provided, and aginst the peace and dignity of the United States of America.

ROBT. E. SHELTON, Assistant
United States Attorney.

Exhibit A.

Selective Service

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300 (GPO)

(Local Board Date Stamp With Code)

OFFICIAL BUSINESS

(Reverse Side)

Notice of right to appeal

Appeal from classification by local board must be made within 10 days after the mailing of this notice. You may file a written notice of appeal with the local board, or you may go to the office of the local board and sign appeal form on back of Selective Service Questionnaire (Form 40).

Within the same 10-day period you may file a written request for personal appearance before the local board. If this is done, the time in which you may appeal is extended to 10 days from the date of mailing of a new Notice of Classification (Form 57) after such personal appearance.

If an appeal has been taken and you are classified by the board of appeal in either Class 1-A, 1-A-O, or IV-E and one or more members of the board of appeal dissented from such classification, you may file appeal to the President with your local board within 10 days after the mailing of notice of such classification.

For advice, see your Government appeal agent.

The law requires you: (1) To keep in touch with your local board; (2) to notify it of any change of address; (3) to notify it of any fact which might change your classification; (4) to comply with the instructions on the notice of classification part of this form. GPO 16—31524-4

Cut along this line

NOTICE OF CLASSIFICATION App. not Req.

(First name) (Middle name) (Last name)

Order No. ..... has been classified in Class .....

(Until ....., 19.....)
(Insert date for Class II-A and II-B only)

by ☐ Local Board.
☐ Board of Appeal (by vote of ..... to .....).
☐ President.

....., 19..... .....
(Date of mailing) (Member of local board)

The law requires you, subject to new penalty for violation, to have this notice, in addition to your Registration Certificate (Form 2), in your personal possession at all times—to exhibit it upon request to authorized officials—to surrender it, upon entering the armed forces, to your commanding officer.

DSS Form 57. (Rev. 12-10-43.)

Cut along this line to detach card

Endorsed: Filed in District Court on October 17, 1944.

Arraignment.

16 On this 20th day of October, 1944, the defendant appears in person and by Herbert K. Hyde, Esq., his attorney, is duly and legally arraigned upon the indictment herein and enters his plea of not guilty as charged therein. Said defendant is granted leave to stand on his present bond.

Order Granting Leave to File Motion.

17 On this 4th day of December, 1944, the defendant asks and is granted leave to file motion to suppress evidence and petition to return private papers, books, and other property to the defendant. It is ordered by the Court that said motion be taken under advisement and ruling reserved until Tuesday, December 5, 1944. * * * * *

[Defendant's Exhibit 1.]

Notice to Suppress Evidence and Petition to Return Private Papers, Books and Other Property to Defendant.

State of Oklahoma, Oklahoma County, ss.

18 Now Comes George Harris, defendant, and being first duly sworn, on oath states:

That on the 20th day of July, 1944, he was living in and occupying as his home an apartment consisting of living room, bedroom, kitchen and bath, located at 2308 North Ellison Street, in the City of Oklahoma City, Oklahoma;

That on said date he was at home in said premises, and that at about 12:20 p. m., one Thomas G. Melvin, a Special Agent of the Federal Bureau of Investigation, accompanied by four other officers or agents of the Government whose names are unknown to this defendant, came to defendant's said home, knocked at the door, and upon the door being opened by defendant the said Melvin pulled a gun, stated that they were F.B.I. Agents and that they had a warrant for defendant's arrest, and thereupon showed defendant two warrants and told him what he was being arrested for;

that true and correct copies of said warrants, together with true and correct copies of the complaints upon which the same were issued are hereto attached, marked Exhibits A and B, respectively, and made a part hereof;

That thereupon the said Melvin told the other officers to search the house and not to overlook anything, to ransack it and tear it up; designating one to take the living room, one the bathroom, one the bedroom, and the other to look around on the outside; that defendant thereupon asked the said Melvin for a search warrant and asked him what right he had to search his home, and the said Melvin stated that he didn't need a search warrant, and that the warrant he had for the arrest was sufficient cause for him to search his home;

19 That defendant had been handcuffed immediately upon the aforesaid arrest, and was sitting there in the living room, the five officers alternating in staying there with him;:

That said officers immediately started to search through defendant's said home, ransacking it from top to bottom, going through all his personal belongings, looked underneath the carpets, turned the bed upside down, went through all of the defendant's personal papers, opened all the drawers of the bureaus and cabinets, searched in the clothes closet, inside the defendant's shoes and shoe horns; and that said search continued without interruption until about 8:00 o'clock, p. m., on said date, constituting about seven and one-half hours;

That during the course of said search the said Agent Melvin stated to defendant that they were looking for blank checks of the Mudge Oil Company, and several times asked defendant where they were, said he knew they were in the apartment, and that he was going to find them if he had to tear everything down;

That at about 3:00 p. m., the said Melvin wanted to search defendant's automobile which was parked outside and which was locked; that defendant refused to give him such permission, as they did not have a search warrant therefor; that thereupon the said Melvin stated that he would get a search warrant then, and that he left about 3:30 p. m.,

leaving the other officers to continue the search, and that he returned at about 6:10 p. m. and served a search warrant upon defendant purporting to authorize the search of defendant's automobile and of an office in the Perrine Building in Oklahoma City; a true and correct copy of said search warrant, together with a true and correct copy of the affidavit upon which the same was issued, are hereto attached, marked Exhibits C and D, respectively, and made a part hereof;

That during the absence of the said Melvin and at about 6:00 p. m., the other officers produced the envelope from which they took the "eight (8) Notice of Classification cards DSS Form 57 and eleven (11) Registration Certificates, DSS Form 2," described and referred to in the Indictment herein, and which it is stated in said Indictment were "sealed in an envelope on which he had written: 'George Harris Personal Papers' and hidden in the second drawer of a small bureau in a bedroom" of said apartment;

That said search continued, as aforesaid, until about 8:00 p. m., at the end of which time Agent Melvin asked the other officers if they had searched everything, and they stated to him that they didn't miss a thing;

That defendant is unable to state all of the things seized and carried away by said officers, either from his said home, his automobile, or the aforesaid office at 424 Perrine Building; but that, in addition to the aforesaid eight cards and eleven certificates there were also seized and carried away from the home of defendant, among other things, the following: blank stationery of various hotels, blank ruled sheets of paper, several old, broken and obsolete fountain pens, expense bills and receipts, personal mail letters, bill of sale for defendant's automobile, note books, address books, and some mineral deeds, which said mineral deeds have since been returned to defendant; that they found nothing whatsoever which in any way pertained to the Mudge Oil Company; that the said articles so seized were wrapped in a package and carried away from said home by said officers in a package approximately one foot by one foot by two feet in size;

That from his automobile defendant has missed and therefore alleges were carried away by said officers the following: A pair of sunglasses, in a leather case, of the value of about $30.00; paid expense bills for repairs on said automobile; notebooks, and other personal belongings which he is unable to itemize;

That from the aforesaid office there was seized an unopened and sealed letter addressed to this defendant and which had been received at said office through the United States mails; that said letter was later opened in the
21 office of the United States Attorney, a copy thereof made and retained by said Attorney, and that the original letter was thereupon returned to this defendant;

Defendant further says that the United States District Attorney, marshal, the clerk of this Court and the aforesaid F.B.I. agents took the above-described property so seized into their possession, and have failed and refused to return the same, or any portion thereof except the said mineral deeds and original letter, to this defendant;

And this defendant alleges:

1. That the sole purpose of said searches and seizures was exploratory and merely to attempt to discover and seize evidence to convict this defendant of crime;

2. That the said search warrant for said automobile and office was and is invalid, because issued upon an affidavit based solely upon information and belief;

3. That the things to be seized and the place where they were located were not particularly described in the affidavit for said search warrant or in said search warrant itself;

4. That none of the articles and property seized by said officers related or pertained, directly or indirectly, to the crime for which this defendant was then purported to be arrested;

5. That said officers had no search warrant for the home of this defendant, and had no authority for searching said home or for seizing any of the aforesaid articles or any others;

6. That said searches and seizures were and are in viola-

tion of the Fourth and Fifth Amendments to the Constitution of the United States;

7. That said property is being unlawfully and improperly held by the said district attorney, marshal, clerk and F.B.I. Agents in violation of defendant's rights under the aforesaid Amendments to the Constitution of the United States;

8. That this defendant is informed and believes that the said district attorney, marshal, clerk and F.B.I. Agents *intends* to attempt to introduce in evidence against this defendant on the trial of this cause the aforesaid articles and property so unlawfully and wrongfully seized by said officers, and particularly the aforesaid eight cards and eleven certificates so seized from among the private papers of this defendant, and that unless said evidence be suppressed that they will do so, in violation of this defendant's rights under the aforesaid Amendments to the Constitution of the United States.

22

Wherefore, defendant prays that said district attorney, marshal, clerk and F.B.I. Agents be directed and ordered to return all of the articles and property seized as aforesaid to this defendant, and that the same be suppressed as evidence in the trial of this cause.

GEORGE HARRIS, Defendant.

Subscribed and sworn to before me this 1st day of December, 1944. Lee Williams, Notary Public. My commission expires: Feb. 12, 1945. (Seal).

HERBERT K. HYDE, 406 Perrine Bldg.,
Oklahoma City, Attorney for Defendant.

Exhibit A.

(United States Commissioner's Blanks No. 1)

Affidavit, Complaint, or Information for Warrant.

United States of America, Western District of Oklahoma, ss.

23 Before me, Paul E. Showalter, a United States Commissioner for the Western District of Oklahoma

personally appeared this day G. H. *Wewin*, Spec. Agt. F.B.I., who being first duly sworn, deposes and says that on or about the 7 day of March A. D. 1944 at Blackwell, Oklahoma, in said District, George Harris, alias Ralph Howard, alias Ralph B. Howard, and C. R. Moffett in violation of Section 338, Title 18 of the U. S. C. A. did unlawfully wilfully, knowingly and feloniously place and cause to be placed in the Post Office at Blackwell, Oklahoma, to be sent and delivered by the Post Office establishment of the United States, according to the address thereon, a certain letter addressed to Guaranty Trust Company of New York, which said letter was in furtherance of, and for the purpose of, executing a scheme to defraud and to obtain money and property by means of false pretenses and promises theretofore formed by the said defendants, George Harris and C. R. Moffett, which said scheme was in connection with the negotiation and cashing of a certain false, forged and fictitious check for the sum of $25,000.00, drawn on the Mudge Oil Company and signed "The Mudge Oil Co., E. W. Mudge, Jr., V.P., S. H. Newbery, Treas.," said check on the reverse side thereof containing the endorsement, "American Oil & Gas Co., Blackwell, Oklahoma, by C. R. Moffett, Owner," and which said check was thereafter cashed at the First National Bank, Blackwell, Oklahoma, the same also bearing endorsements guaranteed, March 7, 1944, "First National Bank, Blackwell, Oklahoma, 86-153, and being further endorsed "For Collection and Remittance, Endorsements Guaranteed Guaranty Trust Company of New York 193368", the said George Harris and C. R. Moffett, and each of them, at all times knowing said check to be falsely made, forged and counterfeited, and the said check being deposited for collection and payment in *pursuant* of said scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America;

contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Deponent further says that he has reason to believe and

does believe that G. H. Erwin, Enid, Oklahoma, W. W. Chamber, Blackwell, Okla. & Earl T. Bowman, Blackwell, Oklahoma

are material witnesses to the subject matter of the complaint.

G. H. ERWIN, Spec. Agt. F.B.I.

Sworn to before me, and subscribed in my presence, this 15 day of July A. D. 1944.

(Seal)

PAUL F. SHOWALTER, United States Commissioner as aforesaid.

Exhibit B.

(United States Commissioner's Blanks. No. 103)

Warrant to Apprehend.

The President of the United States of America,

To the Marshal of the United States for the Western District of Oklahoma and to His Deputies, or Any or Either of Them & to Directors, Assistant Directors, Special Agent or Inspectors of the F. B. I.

24 Whereas, G. H. Erwin, Spec. Agt. F.B.I., has made complaint in writing under oath before me, the undersigned, a United States Commissioner for the Western District of Oklahoma charging that George Harris, alias Ralph Howard, alias Ralph B. Howard and C. R. Moffett, late of .....County, in the State of ..... did, on or about the 7 day of March, A. D. 1944, at Blackwell, Oklahoma, in said District, in violation of Section 338 Title 18 of the U.S.C.A., did unlawfully

wilfully, knowingly, and feloniously place and cause to be placed in the Post Office at Blackwell, Oklahoma, to be sent and delivered by the Post Office establishment of the United States, according to the address thereon, a certain letter addressed to Guaranty Trust Company of New York, which

said letter was in furtherance of, and for the purpose of, executing a scheme to defraud and to obtain money and property by means of false pretenses and promises theretofore formed by the said defendants, *George* Harris and C. R. Moffett, which said scheme was in connection with the negotiation and cashing of a certain false, forged and fictitious check for the sum of $25,000.00, drawn on the Mudge Oil Company and signed "The Mudge Oil Co., E. W. Mudge, Jr., V.P., S. H. Newbery, Treas.," said check on the reverse side thereof containing the endorsement, "American Oil & Gas Co., Blackwell, Oklahoma, by C. R. Moffett, Owner", and which said check was thereafter cashed at the First National Bank, Blackwell, Oklahoma, the same also bearing endorsements guaranteed, March 7, 1944, First National Bank, Blackwell, Oklahoma, 86-153, and being further endorsed "For collection and Remittance, Endorsements Guaranteed Guaranty Trust Company, of New York 193368", the said George Harris and C. R. Moffett, and each of them, at all times knowing said check to be falsely made, forged and counterfeited, and the said check being deposited for collection and payment in *pursuant* of said scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Now, Therefore, You are Hereby Commanded, in the name of the President of the United States of America, to apprehend the said George Harris, alias Ralph Howard, alias Ralph B. Howard, and C. R. Moffett *whereever* found in your District, and bring their bodies forthwith before me or any other Commissioner having jurisdiction of said matter, to answer the said complaint, that he may then and there be dealt with according to law for said offense.

Given under my hand and seal this 15 day of July, A. D. 1944.

PAUL F. SHOWALTER, United States Commissioner as aforesaid.

(Seal)

Exhibit C.

(United States Commissioner's Blanks. No. 1)

Affidavit, Complaint, or Information for Warrant.

United States of America, Western District of Oklahoma, ss.

Before me, Paul F. Showalter, a United States Commissioner for the Western District of Oklahoma personally appeared this day G. H. Erwin, Spec. Agt. F. B. I. who being first duly sworn, deposes and says that on or about the 7 day of March A. D. 1944 at Blackwell, Oklahoma, in said District, George Harris, alias Ralph B. Howard alias Ralph Howard, and C. R. Moffett, in violation of Section 415 Title 18 of the U. S. C. A., did unlawfully knowingly, wilfully and feloniously, and with intent to defraud the First National Bank, Blackwell, Oklahoma, Mellon National Bank, Pittsburgh, Pennsylvania, The Mudge Oil Company, Pittsburgh, Pennsylvania, Guaranty Trust Company of New York, transport, or cause to be transported in interstate commerce from Blackwell, Oklahoma, to Pittsburgh, Pennsylvania, a certain falsely made, forged and counterfeited security or check drawn on *Mellin* National Bank, Pittsburgh, Pennsylvania, dated March 4, 1944, made payable to American Oil and Gas Co., E. W. Mudge, Jr., V.P., S. H. Newbery, Treas., said check on the reverse side thereof containing the endorsements: American Oil & Gas Co., Blackwell, Oklahoma, by C. R. Moffett, Owner, and thereafter being cashed at the First National Bank, Blackwell, Oklahoma, pay to the order of any bank or banker, prior endorsements guaranteed, March 7, 1944, First National Bank, Blackwell, Okla., 86-153, and being further endorsed for Collection and Remittance, Endorsements Guaranteed Guaranty Trust Company of New York 193368, the said *George* Harris, with aliases, and C. R. Moffett, and each of them, at all times knowing said check to be falsely made, forged and counterfeited;

contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Deponent further says that he has reason to believe and does believe that

are material witnesses to the subject matter of the complaint.

G. H. ERWIN, Spec. Agent, F.B.I.

Sworn to before me, and subscribed in my presence, this 15 day of July A. C. 1944.

(Seal) PAUL F. SHOWALTER, United States Commissioner as aforesaid.

(United States Commissioner's Blanks. No. 103)

Warrant to Apprehend.

The President of the United States of America,

To the Marshal of the United States for the Western District of Oklahoma and to His Deputies, or Any or Either of Them; & to Director, Assistant Director, Special Agents or Inspectors of the F. B. I.

26 Whereas, G. H. Erwin, Spec. Agt. F.B.I. has made complaint in writing under oath before me, the undersigned, a United States Commissioner for the Western District of Oklahoma charging that George Harris, alias Ralph R. Howard, alias Ralph Howard, and C. R. Moffett, late of..... County, the State of ....., did, on or about the 7th day of March, A. D. 1944, at Blackwell, Oklahoma, in said District, in violation of Section 415, Title 18 of the U. S. C. A. did unlawfully, knowingly, wilfully and feloniously, and with intent to defraud the First National Bank, Blackwell, Oklahoma, Mellon National Bank, Pittsburgh, Pennsylvania, The Mudge Oil Company, Pittsburgh, Pennsylvania, Guaranty Trust Company of New York, transport, or cause to be transported in interstate commerce from Blackwell, Oklahoma, to Pittsburgh, Pennsylvania, a certain falsely made, forged and counterfeited security or check drawn on Mellon National Bank, Pittsburgh, Pennsylvania, dated March 4, 1944, made payable to American Oil and Gas Co., Blackwell, Oklahoma, in the sum of $25,000.00, drawn on The Mudge Oil Co., E. W. Mudge, Jr., V.P., S. H. Newbery, Treas., said check on the reverse side there-

of containing the endorsements: American Oil & Gas Co., Blackwell, Oklahoma, by C. R. Moffett, Owner, and thereafter being cashed at the First National Bank, Blackwell, Oklahoma, pay to the order of any bank or banker, prior endorsements guaranteed March 7, 1944, First National Bank, Blackwell, Okla., 86-153, and being further endorsed, for Collection and Remittance, Endorsements Guaranteed Guaranty Trust Company of New York 193368, the said George Harris, with aliases and C. R. Moffett, and each of them, at all times knowing said check to be falsely made, forged and counterfeited;

contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Now, Therefore, You are Hereby Commanded, in the name of the President of the United States of America, to apprehend the said George Harris, alias Ralph B. Howard, alias Ralph Howard and C. R. Moffett, wherever found in your District and bring their bodies forthwith before me or any other Commissioner having jurisdiction of said matter, to answer the said complaint, that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal this 15 day of July A. D. 1944.

PAUL F. SHOWALTER, United States Commissioner as aforesaid.

(Seal)

Application for Search Warrant.

27 Before The Honorable Paul F. Showalter, United States Commissioner for the Western District of Oklahoma

In the Matter of the Application for a Search Warrant for George Harris, alias Ralph B. Howard, alias Ralph Howard, and the following described property: 1942 Model Chrysler Town Sedan, Engine No. C363912, bearing 1944 Kansas license tag No. 2-41352, parked at the curb in front of his residence located at 3308 North Ellison Street, Oklahoma City, Oklahoma; and his private offices and effects located at 424 Perrine Building, Oklahoma City, Oklahoma.

Thomas G. Melvin, being first duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation, at Oklahoma City, Oklahoma, and the United States of America; that he has good cause to believe, and does believe that George Harris, alias Ralph B. Howard, alias Ralph Howard, has in his possession on or in his automobile, described as follows, to-wit: 1942 Model Chrysler Town Sedan, Engine No. C363912, bearing 1944 Kansas license tag No. 2-41352, which is parked at the curb in front of his residence located at 2308 North Ellison Street, Oklahoma City, Oklahoma, or at or in his private offices and effects located at 424 Perrine Building, Oklahoma City, Oklahoma, or John Doe's office located in said room, certain monies unlawfully obtained, checks of The Mudge Oil Company and other forms of checks and other paraphernalia and instrumentalities used in the perpetration of what is commonly known as "confidence game," or in connection with the making of, and uttering of, false, forged and counterfeit instruments of credit, and gasoline mileage ration books which he is holding in his possession unlawfully and which said ration books have been issued in violation of orders issued pursuant to the authority of, and by, the Office of Price Administration, said mileage ration books being used in connection with the driving and operation of the said above-described automobile and said books being issued in addition to those which have been legally issued to the said George Harris, alias Ralph B. Howard, alias Ralph Howard.

28 Wherefore, affiant prays that a Search warrant may issue directed to Thomas G. Melvin, Special Agent of the Federal Bureau of Investigation, with offices in Oklahoma City, Oklahoma, in the Western District of Oklahoma, and such other Special Agents of the Federal Bureau of Investigation as he may authorize or deputize to assist him, to search said automobile hereinabove described belonging to George Harris, alias Ralph B. Howard, alias Ralph Howard, located as aboye set out, and to search the private offices and effects of the said George Harris, alias Ralph B. Howard, alias Ralph Howard, located at 424 Perrine Building Oklahoma City, Oklahoma, and to then and there seize and take into their possession and custody any and all monies in any form, checks of The Mudge Oil Company and other forms of checks and other paraphernalia and instru-

mentalities used in the perpetration of what is commonly known as the "confidence game," or in connection with the making of, and uttering of, false, forged and counterfeit instruments of credit, and gasoline mileage ration books unlawfully possessed by the said George Harris, alias Ralph B. Howard, alias Ralph Howard, to the end that the same may be dealt with according to law.

THOMAS G. MELVIN, Special Agent, Federal Bureau of Investigation, Affiant.

Subscribed and sworn to before me this 20th day of July, 1944.

PAUL F. SHOWALTER,
United States Commissioner.

Exhibit D.

Search Warrant.

United States of America, Western District of Oklahoma, ss.

The President of the United States of America.

To: Thomas G. Melvin, Special Agent, Federal Bureau of Investigation, Oklahoma City, Oklahoma, in the Western District of Oklahoma, and to such other Special Agents of the Federal Bureau of Investigation as he may authorize or deputize to assist him, or any of them, Greeting:

29 Whereas application on oath and in writing verified by Affidavit has this day been made before me, Paul F. Showalter, United States Commissioner for the Western District of Oklahoma by Thomas G. Melvin, Special Agent of the Federal Bureau of Investigation, Oklahoma City, Oklahoma, in the Western District of Oklahoma, alleging that George Harris, alias Ralph B. Howard, alias Ralph Howard, who owns a 1942 Model Chrysler Town Sedan automobile Engine No. C363912, bearing 1944 Kansas license tag No. 2-41352, which is parked at the curb in front of his residence located at 2308 North Ellison Street, Oklahoma City, Oklahoma, and who maintains a private office and effects located at 424 Perrine Building, Oklahoma City, Oklahoma,

or John Doe's office located in said room, has in his possession on or in said automobile, or at or in said private offices and effects, certain monies unlawfully obtained, checks of The Mudge Oil Company and other forms of checks and other paraphernalia and other instrumentalities used in the perpetration of what is commonly known as the "confidence game", or in connection with the making of, and uttering of, false, forged and counterfeit instruments of credit, and gasoline mileage ration books which he is holding in his possession unlawfully and which said ration books have been issued in violation of orders issued pursuant to the authority of, and by, the Office of Price Administration, said mileage ration books being used in connection with the driving and operation of the said above-described automobile and said books being issued in addition to those which have been legally issued to the said George Harris, alias Ralph B. Howard, alias Ralph Howard, and that the said George Harris, alias Ralph B. Howard, alias Ralph Howard, is now retaining and using said property in violation of the statutes of the United States of America.

30 You are, therefore, hereby commanded, in the name of the President of the United States, to search the person of George Harris, alias Ralph B. Howard, alias Ralph Howard, and to enter upon and search the private offices maintained by him located at 424 Perrine Building, Oklahoma City, Oklahoma, and the automobile owned by him described as a 1942 Model Chrysler Town Sedan, Engine No. C262912, bearing 1944 Kansas license tag No. 2-41352, which is parked at the curb in front of his residence located at 2308 North Ellison Street, Oklahoma City, Oklahoma, in the day time, and in the event you find any of those things described in the application for search warrant, to-wit: certain monies unlawfully obtained, checks of The Mudge Oil Company and other forms of checks and other paraphernalia and the instrumentalities used in the perpetration of what is commonly known as the "confidence game," or in connection with the making of, and uttering of, false, forged and counterfeit instruments of credit, and gasoline mileage ration books which he is holding in his possession unlawfully and which said ration books

have been issued in violation of orders issued pursuant to the authority of, and by, the Office of Price Administration, said mileage ration books being used in connection with the driving and operation of the said above-described automobile and said books being issued in addition to those which have been legally issued to the said George Harris, alias Ralph B. Howard, alias Ralph Howard, in the possession of said party, or in the said automobile above described, or in the private offices and effects above described, being in his possession and being used in violation of the statutes of the United States or issued to him in violation of the rules and regulations made by the Office of Price Administration pursuant to law; you are authorized and commanded to seize and secure the same and to make a return of your action on this Search Warrant within ten days from the date hereof and to do and report concerning the same as the law directs and requires.

You are likewise commanded to give a copy of this warrant to the person searched, together with a receipt specifying in detail any property seized or taken hereunder to the person from whom it is taken or in whose possession it is found, and in the absence of any such person, to leave copy of this warrant with the receipt aforesaid at the place where such warrant is executed and such property taken, if any.

31 Given under my hand and the seal of the Court, this 20th day of July, 1944.

PAUL F. SHOWALTER,
(Seal) United States Commissioner.

(Clerk's Note: This pleading and the exhibits attached thereto were introduced as defendant's Exhibit #1 but will not be included as an exhibit among those transmitted to the Circuit Court of Appeals.)

Endorsed: Filed in District Court on December 4, 1944.

Order Continuing Date of Trial.

32 On this 6th day of December, 1944, parties appear by their respective counsel and waive trial by jury in open court. Thereupon, it is ordered by the Court that this cause be continued for trial before the Court to December 8, 1944, at 9:30 A. M. * * * * *

Motion to Quash Indictment.

33 Comes now the defendant, George Harris, and moves the Court to quash the indictment returned herein, and each and every separate count thereof, upon all the files in this case in this Court, in the files of the United States Attorney, for the reason and upon the ground that said indictment and each and every separate count thereof is based solely, and the only evidence before the grand jury was evidence had and obtained by an illegal search and seizure in violation of the constitutional rights of this defendant under the Fourth and Fifth Amendments to the Constitution of the United States, for the same reasons as stated in the notion to suppress evidence and for return of articles so seized heretofore filed herein.

HERBERT K. HYDE,
Attorney for Defendant.

Endorsed: Filed in District Court on December 8, 1944.

Demurrer.

34 Comes now the defendant, George Harris, and demurs to the Indictment returned and filed herein, for the reason that said Indictment does not state facts sufficient to charge any offense against the laws of the United States.

2.

Defendant further demurs separately to each and every separate of the nineteen counts in said Indictment, for the reason that none of said counts, separately, state sufficient

facts to charge any offense against the laws of the United States.

HERBERT K. HYDE,
406 Perrine Bldg., Oklahoma City, Attorney for Defendant.

Endorsed: Filed in District Court on December 8, 1944.

Waiver of Jury Trial.

35 I, the undersigned defendant in the above-entitled case, do hereby state and acknowledge that the indictment has been fully explained to me, and I am fully advised of the charge against me contained therein. I further state that the court has duly explained to me my constitutional rights, and to have a trial by jury.

I hereby waive the right to trial by a jury, and enter a plea of not guilty to each count set forth in said indictment.

I have carefully read the foregoing before affixing my signature thereto at Oklahoma City, Oklahoma, this 8th day of December A. D. 1944.

GEORGE HARRIS,
Defendant.

We, the undersigned, were present at the time the court apprised the defendant of his constitutional rights, and witnessed the signature of the defendant.

THEODORE M. FILSON
B. R. SIMPSON

Endorsed: Filed in District Court on December 8, 1944.

[Rulings on Various Motions etc.]

36 On this 8th day of December, 1944, the plaintiff appears by Charles E. Dierker, Esq., United States Attorney, and Robert E. Shelton, Esq., Assistant United States Attorney, and the defendant appears in person and by Herbert K. Hyde, Esq., his attorney. Thereupon, the motion of the defendant to suppress evidence herein comes on for hearing, arguments of counsel are heard, and the

Court being fully advised in the premises overrules said motion to suppress evidence, and exceptions are allowed the defendant. Thereupon, the defendant asks and is granted leave to file supplemental motion to suppress evidence, motion to quash, and demurrer to the indictment, which motions and demurrer are considered by the Court, overruled, and exceptions are allowed the defendant to the rule of the Court thereon. Thereupon, said cause is called for trial. The defendant waives trial by jury in writing, and the case is tried to the Court without the intervention of a jury. Counsel for plaintiff states its case to the Court, and at this time counts eleven and thirteen are dismissed by the Court on motion of the United States Attorney. Thereupon, the plaintiff presents its evidence and proof and rests. The defendant waives the presentation of evidence and proof and renews his motion to dismiss and demurrer to the indictment, which are considered by the Court, each overruled and exceptions are allowed the defendant. Thereupon, this case is submitted to the Court for determination upon the evidence presented to the Court. * * * * *

[Order Re-Opening Case etc.]

37 On this 18th day of December, 1944, the plaintiff appears by Charles E. Dierker, Esq., United States Attorney, and Robert E. Shelton, Esq., Assistant United States Attorney, and the defendant appears in person and by Herbert K. Hyde, Esq., his attorney. Thereupon, by direction of the Court this case is re-opened for the further presentation of evidence, and the plaintiff presents further evidence and proof and Virginia McCollum, Pauline Howard and Edith B. King are sworn and testify in behalf of plaintiff, and the plaintiff rests. The defendant presents no evidence and rests, and the taking of evidence is closed. Thereupon, the defendant renews his motion to suppress evidence and demurrer to the indictment, which said motions and cause are re-submitted to the Court for determination, and said cause is assigned for decision on January 4, 1945, at 9:30 A. M. The defendant is granted leave to stand on his present bond. ***

[Finding of Guilt and Judgment and Commitment.]

38 On this 4th day of January, 1945, the plaintiff appears by Robert E. Shelton, Esq., Assistant United States Attorney, and the defendant appears in person and by Herbert K. Hyde, Esq., his attorney. Thereupon, this cause comes on for hearing on motion of the defendant to suppress evidence, motion to quash indictment, and demurrer to indictment, which are considered by the Court, each overruled, and exceptions allowed the defendant. Thereupon the Court finds the defendant not guilty on the first count of the indictment, and counts eleven and thirteen having heretofore been dismissed by the Court, the Court finds the defendant guilty on each of counts two, three, four, five, six, seven, eight, nine, ten, twelve, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen.

Judgment and Commitment.

On this 4th day of January, 1945, came the United States Attorney, and the defendant, George Harris, appearing in proper person, and by Herbert K. Hyde, Esq., and

The defendant having been convicted on finding of guilt by the Court of the offenses charged in the indictment in the above-entitled cause, to wit: receiving and concealing Government property and violation of Selective Service Act of 1940, Regulations 623.21-2, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the penitentiary type to be designated by the Attorney General or his authorized representative for the period of five (5) years on each of the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, twelfth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth counts, or until said defendant is otherwise discharged as provided by law.

It is Further Ordered that sentences of confinement herein shall run concurrently.

It is further ordered that appeal bond of the defendant is fixed in the sum of Ten Thousand Dollars ($10,000.00) and the defendant is granted until 12:00 o'clock Noon, January 5, 1945, to file said appeal bond, and the defendant is
39 permitted to stand on his present bond, until that time.

It is further ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

STEPHEN S. CHANDLER, JR.
United States District Judge.

Notice of Appeal.

41 Name and Address of Appellant: George Harris, 2308 North Ellison, Oklahoma City, Oklahoma.

Name and Address of Appellant's Attorneys: Herbert K. Hyde, and Lee Williams, 406 Perrine Building, Oklahoma City, Oklahoma.

Offense: Violation: Section 100, Title 18, USCA; Section 101, Title 18, USCA; Section 311, Title 50, App. USCA; Selective Service Act of 1940 Regulations 623.61-2.

Date of Judgment: January 4, 1945.

Brief Description of Judgment and Sentence: Guilty on 16 counts; Five years' imprisonment on each count, concurrent.

Status: Defendant released on $10,000 appeal bond.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Tenth Circuit, from the judgment and sentence above mentioned, on the grounds set forth below.

GEORGE HARRIS,
Appellant.

Dated: January 5, 1945.

1. That the Court erred in overruling the motion of the defendant to suppress evidence.

2. That the Court erred in overruling the petition of the defendant for the return of private papers and other property to the defendant.

3. That the Court erred in overruling the motion of the defendant to quash the indictment.

4. That the Court erred in overruling the demurrer of the defendant to the indictment, and to each and every separate count thereof.

5. The Court erred in the admission of evidence over the objection of the defendant.

6. The Court erred in decisions of law arising during the course of the trial.

42 7. That the judgment is contrary to law.

8. That the judgment is contrary to the evidence.

9. That the judgment is not supported by sufficient evidence.

10. That the evidence upon which the indictment, and each and every count thereof, was based, and which was introduced in evidence and upon which the judgment of conviction on each and every count was based, was obtained by an unreasonable and unlawful search and seizure in violation of the rights of the defendant under the Fourth and Fifth Amendments to the Constitution of the United States.

HERBERT K. HYDE,
LEE WILLIAMS,
Attorneys for Defendant.

Receipt of the within and foregoing Notice of Appeal is hereby acknowledged this 5" day of January, 1945, in duplicate.

THEODORE M. FILSON,
Clerk, United States District Court for the Western District of Oklahoma.

Service of a copy of the within and foregoing Notice of Appeal is hereby acknowledged this 5 day of January, 1945.

CHARLES E. DIERKER,
United States Attorney,
Western District of Oklahoma.

Endorsed: Filed in District Court on January 5, 1945.

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45 [An approved appeal bond in the sum of $10,000.00 was filed January 5, 1945.]

Clerk's Statement of Docket Entries

To Be Forwarded Under Rule IV
of U. S. Supreme Court.

1. Indictment for violation Section 100, Title 18, U.S.C.A., Section 101; Title 18, U.S.C.A., Section 311, Title 50, App. U.S.C.A., Selective Service Act of 1940 Regulations 623.61-2, Returned and filed ..... October 17, 1944.

2. Arraignment with plea of not guilty ..... (Judge Chandler) ..... October 20, 1944.

3. Motion of defendant to suppress evidence, and petition to return private papers, books and other property, filed ..... December 4, 1944.

4. Motion to quash indictment and demurrer to indictment filed ..... December 8, 1944.

5. Waiver of trial by jury filed ..... December 8, 1944.

6. Hearing on motion of defendant to suppress evidence overruled, exception allowed. Defendant leave file supplemental motion to suppress evidence and motion to quash indictment overruled, exception allowed. Defendant leave to file demurrer to indictment overruled, exception allowed. Counts eleven and thirteen dismissed on motion U. S. Attorney. Cause tried to Court and evidence of plaintiff heard. Defendant waives presentation of evidence and proof and renews motions to dismiss and demurrer to indictment. Overruled, exceptions allowed. Cause submitted to the Court for determination. (Judge Chandler) ..... December 8, 1944.

7. Case re-opened for further presentation of evidence by direction of Court and plaintiff presents further evidence. Defendant presents no evidence and rests. Defendant renews motion to suppress evidence and demurrer to indictment and said motion and cause resubmitted to the Court for determination. Case assigned for decision on January 4, 1945, 9:30 A. M.....
.....(Judge Chandler).....December 18, 1944.

8. Motion to suppress evidence, motion to quash indictment and demurrer to indictment each overruled and exceptions allowed the defendant. The Court finds the defendant not guilty on first count of the indictment and finds the defendant guilty on each of counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18 and 19. Judgment and sentence imposed five years custody Attorney General from date of delivery on each of sixteen counts above stated, sentences of confinement to run concurrently. Defendant gives notice of intention to appeal and Court fixes appeal bond sum $10,000.00. Defendant granted until 12:00 noon January 5, 1945, to file appeal bond.....(Judge Chandler).....January 4, 1945.

9. Notice of appeal filed by defendant .....January 5, 1945.

10. Appeal bond in sum of $10,000.00 approved and filed.....
.....January 5, 1945.

Dated at Oklahoma City, Oklahoma, January 10, 1945.

Attest:

THEODORE M. FILSON,
(Seal) Clerk of said Court.

Order Granting Appellant Further Time Within Which to Prepare and Procure Settlement of Bill of Exceptions and File Assignments of Error Under Rule 9, and for Transmission of Original Exhibits to Court of Appeals.

40 At Oklahoma City, Oklahoma, in this 26th day of January, 1945, upon hearing on directions pertinent to appeal in accordance with order heretofore entered herein, and on oral application of the defendant and for good cause shown, it is

Ordered that the defendant (appellant) be and he is hereby granted up to and including April 4, 1945, within which to prepare and procure settlement of bill of exceptions on appeal and file the same with the Clerk of this Court under Rule 9 of the Rules of Criminal Procedure, and within which to prepare and file with the Clerk of this Court his assignments of error; and it is further

Ordered that upon the filing of said bill of exceptions and assignments of error within said time, the Clerk of this Court shall forthwith transmit them, together with such matters of record as are pertinent to the appeal, including the Clerk's record of proceedings under Rule 8, with his certificate, together with all the original exhibits introduced in evidence upon the trial of this cause in this Court and upon the hearing on the defendant's motion to suppress evidence, to the Clerk of the Circuit Court of Appeals for the Tenth Circuit, and the papers and exhibits so forwarded shall constitute the record on appeal herein.

STEPHEN S. CHANDLER, JR.
United States District Judge.

O.K.

ROBT. E. SHELTON,
Assistant United States Attorney.

HERBERT K. HYDE,
Attorney for Defendant.

Endorsed: Filed in District Court on January 26, 1945.

Request for Record on Appeal.

178 The Clerk of this Court is hereby requested to prepare and certify a transcript of the record in the above entitled case for the use of the Circuit Court of Appeals of the United States for the Tenth Circuit, by including therein the following:

1. The Indictment.

2. Clerk's Minute, October 20, 1944, re arraignment and plea.

3. Clerk's Minute, December 4, 1944, re leave to file motion to suppress evidence and petition to return papers.

3-a. Appellant's motion to suppress evidence and return papers.

4. Clerk's Minute, December 6, 1944, re waiver of trial by jury.

5. Motion of defendant to quash indictment.

6. Demurrer of defendant to indictment.

7. Waiver of defendant to trial by jury.

8. Clerk's Minute, December 8, 1944, re proceedings on motions and trial.

9. Clerk's Minute, December 18, 1944, re further trial proceedings.

10. Clerk's Minute, January 4, 1945, re motions and demurrer, and decision of Court.

11. Judgment and sentence.

12. Order granting appellant further time within which to prepare and procure settlement of bill of exceptions, and for transmission of original exhibits.

13. Bill of exceptions.

14. Assignments of error.

15. This praecipe.

179 The Clerk of this Court is also requested to forward, under his certificate, all of the original exhibits introduced in evidence upon the trial of this cause and upon the hearing on the defendant's motion to suppress evidence, to the Clerk of the Circuit Court of Appeals of the United States for the Tenth Circuit, for the use of said Court, as required by the Order entered by this Court on January 26, 1945.

HERBERT K. HYDE,
406 Perrine Building,
Oklahoma City, Oklahoma,
Attorney for Appellant.

Service of a copy of the above praecipe acknowledged this 9th day of March, 1945.

CHARLES E. DIERKER,
United States District Attorney,
Western District of Oklahoma,
By ROBT. E. SHELTON,
Assistant United States District Attorney.

Endorsed: Filed in District Court on March 9, 1945.

Assignment of Errors.

48 Comes now the defendant, George Harris, appellant herein, and assigns the following errors made by the trial court as the errors upon which the said appellant will rely in his prosecution of the appeal in the above entitled cause:

1. That the Court erred in overruling the defendant's motion to suppress evidence.

2. That the Court erred in overruling the defendant's petition to return private papers, books and other property.

3. That the Court erred in overruling the defendant's motion to quash the indictment.

4. That the Court erred in overruling the defendant's demurrer to the indictment, and to each and every separate count thereof.

5. That the judgment and sentence are contrary to law.

6. That the judgment and sentence are contrary to the evidence.

7. That the judgment and sentence are not supported by sufficient evidence.

8. That the evidence upon which the indictment, and each and every count thereof, was based, and upon which the judgment of conviction on each and every count was based, was obtained by an unreasonable and unlawful search and seizure in violation of the rights of the defendant under the Fourth and Fifth Amendments to the Constitution of the United States.

9. That the Court erred in admitting in evidence over the objection of the defendant certain tertimony and evidence obtained by virtue of an unreasonable and unlawful search of defendant's home made without any search warrant and without any probable cause, in violation of
49 the rights of the defendant under the Fourth and Fifth Amendments to the Constitution of the United States.

10. That the Court erred in refusing competent, relevant and material testimony offered by and on behalf of the defendant, particularly in refusing to permit the witness Thomas G. Melvin, special agent of the Federal Bureau of Investigation, to testify whether or not the defendant was indicted upon the charge which said witness arrested defendant at the time he searched defendant's home.

11. That the Court erred in permitting the witness James C. Ware to make a demonstration in open Court by opening a door of the Court room by the use of certain pieces of celluloid which were erroneously introduced in evidence over the objection of the defendant.

12. That the Court erred in overruling the demurrer of the defendant to all of the evidence offered by the Government.

13. That the Court erred in overruling the motion of the defendant to strike all of the testimony with reference to the articles which were offered in evidence, for the reason that the same were obtained by the Government agents in violation of law by means of an unreasonable and unlawful search and seizure made of defendant's home without any search warrant and without any probable cause, in violation of the rights of the defendant under the Fourth and Fifth Amendments to the Constitution of the United States.

14. That the Court erred in permitting the Government to introduce the testimony of the witnesses Pauline Howard and Edith Brown King by which they attempted to identify the defendant as a man they had seen in the office of the Mudge Oil Company in Dallas, Texas, in March, 1944.

And, by reason of said errors and other manifest errors appearing in the record herein, the defendant prays that the judgment of the District Court for the Western District of Oklahoma, aforesaid, on the indictment filed herein, be reviewed, reversed and annulled, and that such fur-
50 ther orders be made herein as are mete and proper in the premises, and that the defendant be discharged from the judgment against him and restored to all rights of which he has been deprived by reason of said judgment.

HERBERT K. HYDE,
LEE WILLIAMS,
Attorneys for Defendant.

Receipt of a copy of the foregoing Assignment of Errors is hereby acknowledged this 28 day of March, 1945.

CHARLES E. DIERKER,
United States District Attorney,
By ROBT. E. SHELTON,
Assistant U. S. District Attorney.

Endorsed: Filed in District Court on March 28, 1945.

Bill of Exceptions.

51 Now on this 8th day of December, 1944, the above cause comes on for trial before Hon. Stephen Chandler, Judge, at Oklahoma City, Oklahoma, a jury having been waived by the defendant, in writing.

Appearances: Mr. Charles E. Dierker, U. S. District Attorney, and Mr. Robert E. Shelton, Assistant U. S. District Attorney, for the Plaintiff. Mr. Herbert K. Hyde, for the Defendant.

The Defendant is present in person.

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52 Mr. Hyde: Does Your Honor wish the record to show you overruled my motion to suppress?

The Court: The motion to suppress and the motion to quash will both be overruled.

Mr. Hyde: Exception. And the demurrer. Now at this

time will you let the record show these motions I filed, the motion to quash and the motion to suppress, that our plea of not guilty was withdrawn for the purpose of filing and presenting those matters?

The Court: Yes.

Mr. Hyde: And the defendant now enters his plea of not guilty.

The Court: You may proceed.

Mr. Shelton: Let the record show we objected to him withdrawing his plea and presenting these matters.

The Court: That is satisfactory.

Mr. Hyde: In that connection, I want the record to show I have furnished the United States Attorney with my motions, and did so several days ago, as Your Honor knows, and we have had two or three minor skirmishes in court on it, waiting for an opportunity to present the matter.

The Court: That is true.

Mr. Shelton: May the record also show that I was furnished with a copy of his brief on the day the case
53 was set for trial the first time.

Mr. Hyde: No, the brief was furnished on Monday and the case was set for Tuesday.

The Court: The brief was furnished to the Court the day before. I believe that was Monday, but I don't believe at that time you furnished the United States Attorney a copy.

Mr. Shelton: He handed me one in open court on Tuesday.

Mr. Hyde: I did spend Monday afternoon in your office.

Mr. Shelton: No, it was Tuesday.

Mr. Hyde: The clerk's record will show when I filed this motion. It was before the case was set down.

The Court: As I recall, this case was set the following day. I believe this case was set on Wednesday, wasn't it?

Mr. Hyde: I thought it was Tuesday. Maybe it was Wednesday.

The Court: It was filed while the jury in the case we were trying was just getting ready to retire. I believe it was Monday.

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54 GERRY BOWER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Shelton) State your name.
A. Gerry Bower.
Q. Do you hold any official position with the draft board of Oklahoma City?
A. I have been clerk of draft board No. 7.
Q. How long have you held that position?
A. Since June, 1942.
Q. I hand you what has been identified as Government's Exhibits 1 to 7, inclusive, and ask you if you have ever seen those before.
A. Yes, sir, I have.
Q. When was that?
A. When the FBI agent came up to the office.

Mr. Hyde: I am going to object to this as not being in the presence of the defendant. I further object on the ground that it is incompetent, irrelevant and immaterial, and in violation of the constitutional rights of this defendant, under amendments 4 and 5 of the Constitution and under the Act of Congress of the United States which was passed June 15, 1917, and ask that the same be excluded from the record and from the evidence.

The Court: Overruled.

55 Mr. Hyde: Exception.

Q. (By Mr. Shelton) You saw them first at your office?
A. The FBI agent came in—
Q. My question was, where you saw them.
A. In the office.
Q. In your office?

A. Yes, sir.

Q. Did you see them again after that?

A. Yes, sir.

Q. Where was that?

A. In your office.

Q. Now, I will ask you to look at those instruments and tell the Court what they are.

Mr. Hyde: To save the record, and in order that I may not be constantly objecting, may my objection go all the way through to this testimony concerning these cards?

The Court: That is satisfactory with the Court.

Q. (By Mr. Shelton) Go ahead.

A. This is a notice of classification. Any time a registrant's classification changes it is compulsory that we send him out a notice, one of these notices.

Q. (By Mr. Shelton) As clerk of Board 7, do you in your official capacity have charge and possession of cards of that character?

A. Yes, sir.

56 Q. Are such cards isued to anyone except registrants by your board?

A. No, sir.

Q. Are notice of classification cards such as these, issued to you by the United States Government?

A. Yes, sir. They are issued by Selective Service, state headquarters, the supply division, upon request.

Q. And they are the property of the United States Government?

A. Yes, sir. Also, when I say they are the property of the United States Government, Selective Service is charged with the postage on those cards, on those cards at 1½ cents each and we pay for the postage except the ones that are mailed in the office and we have to account for them, but you get a credit back on the postage.

Q. Now, Mr. Witness, are you acquainted with the defendant Harris, the little fellow there, the red faced fellow behind his counsel?

A. No, sir.

Q. Did you ever issue any cards, notice of classification cards, to him, such as the exhibits here?

A. No, sir.

Q. Did you ever give him or anyone else permission to take cards such as the exhibits here from your office?

A. No, sir.

Q. Where is your office located?

57 A. 825 Cotton Exchange Building, Oklahoma City.

Q. What kind of an office is it?

A. Well, you walk in and there is an ante room with a railing around it, about six by eight feet, I imagine. Then there is a high counter, there is a board on the top on the south side about a foot wide that the registrant can make a change of address, and they usually lean their elbows on it and it has a door that will open to a 45 degree angle. In other words, if the door comes around it will only open 45 degrees. The supplies are kept against the wall to the west of that.

Q. The door which you make reference to is an inside door?

A. An inside door only waist high. The office has one table, four desks and there are some filing cabinets where four of us can work, three or four.

Q. What kind of outer door do you have?

A. A regular office door with a lock, something like a Yale lock or some cylinder lock.

Q. The ordinary Yale lock?

A. A Yale or similar lock.

Q. Now, the cards that you keep there in your office similar to the ones I have here in my hand, are they accessible to the public?

A. No, sir.

Q. Is there any particular reason why they are not?

58 Mr. Hyde: To which we object as incompetent, irrelevant and immaterial. The Court can take judicial knowledge of Government property.

The Court: Overruled.

Mr. Hyde: Exception.

A. What was the question?

Q. (By Mr. Shelton) I just asked you if there was any particular reason why these were not accessible to the public.

A. They get into the hands of the wrong people.

Mr. Hyde: I am going to object to this for the further reason that this would not be binding on this defendant.

Mr. Shelton: I will withdraw the question.

Q. (By Mr. Shelton) Now, Mr. Witness, I hand you Government's Exhibits 1 to 7 inclusive, and ask you if at the time you first saw them that there was any identification on them to indicate that they came from your Board.

A. Yes, sir, this is the Board stamp.

Q. Is that the stamp in the upper left-hand corner of each exhibit?

A. Yes, sir.

Q. Now, is there any other way you can identify these cards as having come from your office?

A. Only that upper stamp which gives the Board location, the Board number; then your code number which
59 one of those numbers represents "Oklahoma", the State of Oklahoma, the other number, Oklahoma County, and the other number, the Board in Oklahoma County.

Q. Now I will ask you to again examine Exhibits 1 to 7, inclusive, and state to the Court whether or not that card has been altered from the ordinary and usual manner in which it is fixed before you mail it out to a registrant?

A. Here is a card—

Q. You can answer that question yes or no.

A. No, that is different than we mail out.

Q. Now explain the difference in the manner in which that card has been altered and changed.

A. If you will notice right under this square here it says "Local Board" the date stamp, with code. That means we have to use a proper stamp on that and the stamp they used on these seven cards is a stamp we never use for that purpose.

Q. Now, the stamp that has been used on that card, on the exhibits here identified, what was it used for by your office?

A. This stamp that is on these cards is only used on a registrant's folder cover right under his order number and serial number, we use this stamp, and under the regula-

tions, in case a man sends an appeal the file leaves the office and is mailed to the appeal board, and that is for identification so it will be returned to the proper
60 board, and that is the only time we use that stamp.

The proper stamp is a dated stamp which shows on there. It shows right under there, the local board, date stamp, with code.

Q. I call your particular attention to Government's Exhibit No. 7. I will ask you if the stamp on that exhibit is the correct and proper stamp which is used by your Board on notice of classification cards.

A. Yes, sir.

Q. I will ask you if you recall when that was placed on that particular exhibit.

A. In your office.

Q. Now, was that correct stamp made by your stamp?

A. Yes, sir.

Q. As clerk of Board No. 7, did you give anyone permission to use the stamp there shown in the upper lefthand corner of each of the exhibits, 1 to 7 inclusive, in marking these cards?

A. No, sir.

Q. I believe you also testified you gave no one permission to take those cards from your office.

A. No, sir.

Q. You mentioned the stamp placed on those cards had a certain identification mark?

A. Yes, sir.

Q. Does the stamp you see on those exhibits bear
61 that identification mark?

A. Yes, sir.

Q. And that is peculiar to your Board only, is it not?

A. Yes, sir, the only Board in the United States that has that code on it or rather combination of code numbers.

Q. Are those, in the process of the conduct of your office, ever stamped up in advance?

A. No, sir. We don't know how many cards we are going to use on a particular day. In other words, a girl fills out the classification after a Board meeting, addresses it. Then this is your dater stamp. She will date it and stamp it, and put them back in the folder, and then after

the Board meeting bring all of the files to my desk and enter it on the ledger and then I mail the cards out.

Q. (By the Court) In other words, that stamp is not used until the card is filled out?

A. No, sir.

Q. (By Mr. Shelton) Do you have the two stamps with you that were used on Exhibit 7, and if so, will your mark them on this sheet of paper and mark which is the correct and which is the incorrect stamp?

A. Would you want this to show any particular date?

Q. No, it doesn't make any difference so it is the correct stamp or in-correct, just whichever way you want to word it.

Q. (By Mr. Shelton) I hand you what has been
62 marked for identification, Government's Exhibits 8 to 18, inclusive, and ask you if among your supplies you have such cards as those?

A. Yes, sir.

Mr. Shelton: Mark this Government's Exhibit 19, and we wish to offer that in evidence.

Mr. Hyde: Same objection.

The Court: Overruled.

Mr. Hyde: Exception.

(Exhibit 19, being a yellow sheet with the impression of the two stamps on it as requested by counsel, is received in evidence.)

Q. (By Mr. Shelton) Did you on or about the 20th of July, 1944, or prior thereto, give anyone permission to take those cards from your office?

Mr. Hyde: To which we object for the further reason there is no testimony so far that these were taken from his office. I have one in my possession here that is just exactly like those.

Mr. Shelton: We haven't offered them yet. This is for identification but we will tie them up later on.

The Court: With that understanding I will allow him to answer.

A. Cards like these are issued to every Board,
63 draft Board, office to be filled out when a man registered, the first, second, third, fourth, fifth and registrations. They are all identical.

Q. (By Mr. Shelton) My question was, did you give anyone permission to take those cards from your office?

A. No, sir.

Q. Did you give the defendant here permission to take them?

A. No, sir, to the best of my knowledge I have never seen the gentleman.

Cross Examination.

Q. (By Mr. Hyde) As a matter of fact, you don't know those cards came from your office, do you?

A. No, sir, I don't.

Q. They are blank registration certificate cards, are they not?

A. Yes, sir.

Q. And the identical cards are printed, distributed and circulated in every draft office in the United States?

A. Yes, sir.

Q. They are all the same, aren't they?

A. Yes, sir.

Q. And likewise, the notice of classification, the printing matter on that is exactly the same except that there is a number for each draft board throughout the United
64 States on the notice of classification, isn't there?

A. What is that question again?

Q. I say, the notice of classification is identical in every office in the United States, isn't it, the blank notice of classification?

A. Not necessarily.

Q. What is the difference?

A. They have been revised several times.

Q. I mean various registration periods, the blanks are the same. We have had six or seven registration periods; have we not?

A. Six.

Q. The Government printing office printed these at the request of the various state or local units throughout the

country and they were shipped out to the state headquarters in each instance, weren't they?

A. National headquarters. It may be the National Selective Service Headquarters will want so many to be distributed to the different supply sections of the various states. Upon proper requisition then the local board in turn requisitions them from the state supply office.

Q. I say for each registration period you had notices of classification furnished you on this, as well as other offices, throughout the United States and they were all identical, weren't they?

65 A. All except the fourth registration.

Q. What is the registration of the cards which are offered in evidence in this case?

A. What are you talking about, classification *of* registration?

Q. No, the registration.

A. The registrations are all the same. The classification is different. Pardon me, I made an error.

Q. You say the classification is different?

A. Yes, sir.

Q. And that was different on the fourth registration?

A. The fourth registration did not get a classification.

Q. Do you know what classification these cards were printed for?

A. They are for the first, second, third, fifth and sixth.

Q. You say your office is in the Cotton Exchange Building?

A. Yes, sir.

Q. And you are connected with local draft board No. 7, aren't you?

A. Yes, sir.

Q. And you have a large number of employees, or did have at different times in your office, haven't you?

A. No, sir.

Q. How many have you had?

A. Five.

Q. And how many have you had all told from the

66 beginning?

A. Five. I mean at various times. If one would quit I would hire someone else. Five besides myself.

Q. But the employees would shift, wouldn't they?

A. Yes, sir.

Q. That is, when you started out to take over in the beginning on classification No. 1, registration No. 1, if you had four or five employees in the beginning—is that all you had in the beginning?

A. I was not there at the beginning, in 1940. We started out with one employee, and then built up to three employees.

Q. There has been a large turnover, hasn't there?

A. I wouldn't say there has been a large turnover.

Q. About how many would you say?

A. Since I have been there there have been two or three.

Q. You have been there how long?

A. Two and one-half years.

Q. You have a total now of four besides yourself?

A. At the present time we have two besides myself.

Q. It has fallen off lately, hasn't it?

A. It must have. They are cutting down expenses.

Q. As I understand your testimony, up in the left-hand corner it says "Selective Service" and there is a place for the local board, Oklahoma County and the date, isn't there?

A. The instructions right under there say what stamp to use and dater code.

67 Q. I hand you my own registration card, draft board No. 1, I believe.

A. Right here, local board, date stamp with code.

Q. The printing you have just read is on every card that is published, that is to say, on the notice of classification of every draft card in the country, isn't it?

A. Oh, no, I wouldn't say what happened before my time.

Q. I mean since you have been on the board.

A. Since I have been on the board.

Q. And if mine was in the first registration, would you think that it was on all of them?

A. Not necessarily. This was put on, "5-27-43." That was the change of your classification "23-AH", the date it was mailed out of that office. That is no sign whether you were in the first registration or not. That didn't make any difference. It is the date that is mailed out.

Q. You say you never do insert the printed matter above in the left-hand corner on the face of these cards until when?

A. Until the girl files this part out here, addresses it,

and after she has done that she puts it beside her typewriter, puts this over it and comes down with it. Then it is put back in the folder and put on the clerk's desk to make the proper entry in the classification records.

68 Q. Where is that sheet of paper you stamped on a minute ago? Did you bring with you the stamp that you ordinarily use?

A. One of them.

Q. I notice here that the date you stamped on this exhibit is October 18. Why is that, if that is a regular stamp that is in use in your office?

A. I don't know why that was.

Q. Have you used that stamp since October 18 at all?

A. I don't use this stamp. The girls use it. We have three of these in the office identically the same. At the present time we only have two girls and we only use two of them.

Q. What is the total number of registrants that you have in your office, the total number of notices of classification you have in your office?

A. The total number of registrants?

Q. Yes.

A. Not counting the fourth, between 6300 and 6400.

Q. And with reference to the notices of classification, that varies, does it not, from time to time with each individual dependent upon his physical and mental condition or the type of work in which he is engaged?

A. That has something to do with it, the change of regulations.

69 Q. So when you say you have 6400 registration certificates, that is, 6400 people registered, naturally then you may have as a result of that 6400 issued, and several times that number of notices of classification.

A. Oh, yes, that is right.

Q. It could involve as many as 30,000 or 40,000, couldn't it?

A. Yes, sir.

Q. So with the requisitions you have made for each registration period since you have been there, you never know how many you are going to need of these, do you? You never know how many of the notices of classification that you are going to need because the needs may vary?

A. I couldn't tell down to the exact one. They come 500 to a package.

Q. What do you do with those? They come 500 to a package from the main office, what do you do with them?

A. We check the requisition against the supplies and we put them in the supply section.

Q. Where is the supply section located?

A. At one side of the office.

Q. Who is in the office?

A. Two girls and myself.

Q. I wish you would name the girls, and their addresses if you can, who have worked in that office since you have been there, that have worked with these classification
70 cards.

A. Mrs. Robertson.

Q. Where does she live and what is her first name?

A. I don't know. She is married. I don't know her first name.

Q. Did you employ her?

A. Employed her. We call her Mrs. Gladys Robertson and she lives on West 39th Street.

Q. How long has she lived there?

A. They bought a place there two or three months ago.

Q. How long has she been in the employ of the draft board?

A. She was there about a year and a half.

Q. Did you hire her?

A. She was there when I came.

Q. Who is the other lady that works there?

A. Mrs. Flippo.

Q. What is her first name?

A. I don't know her first name.

Q. Where does she live?

A. At present she is in California with her husband. He is in the Navy. She quit and went to him when he was ordered to the west coast.

Q. Who else was in the office?

A. Miss Garrison.

Q. What Garrison is that?

A. She lives on West 39th Street.

71 Q. Married?

A. Married.

Q. What is her first name?

A. I don't know.

Q. Did you employ her?

A. I employed her.

Q. What method did you employ in getting these people?

A. Through civil service.

Q. Is there anybody else that works in that division?

A. Miss McCollum. I hired her through civil service about two and a half months ago, two months ago.

Q. You say you have been with this office about two and a half years. These registration certificates as well as the notices of classification could have been printed and furnished to some office at the time of the first draft, could they not?

A. Some of those cards?

Q. Yes.

A. Yes, I imagine it is possible.

Q. In other words, this notice of classification here you say is identical with the first, second and third—

A. It is used for the registrants.

Q. I understand that but eliminating this printed matter—

A. They are used in blank.

Q. That could have been used in the first, second,
72 third or fifth or sixth registration, could it not, any office of the United States?

A. That blank card could have been issued.

Q. That is what I am getting at, the blank card. I say, eliminating that which is contained in the left-hand corner on the face of the classification, notice of classification, together with the registration certificate in blank, these two cards and all of the cards that you have examined could have been furnished by the federal government through the channels you have described to any office in the United States, could they not?

A. Not with that stamp on the corner they could not, the ones I saw in evidence.

Q. I say eliminating this stamp.

A. Oh, yes, if it was in blank you wouldn't know where they came from.

Q. Eliminating this printed matter up here, the stamp matter that you say does not bear any semblance of rela-

tionship to your stamp, eliminating that, they would have blank registration certificates, blank notices of classification, would they not, and they could have been furnished by the channel you have described to any government draft office in the United States, could they not?

A. Yes, sir.

Q. All you mean to say is from your testimony that these instruments that have been introduced in evi-
73 dence you have witnessed here, are identical with the ones that were furnished to your office, that they are government property and that the printed or stamped matter in the left-hand corner on the face of the instrument does not bear the stamps you people use.

A. They bear the stamp that we use but not the stamp we use for that particular thing. It is our government stamp which has been used on that but an improper stamp. Someone used that stamp who didn't know what they were doing.

Q. Do I understand you to say then from your testimony that you have stamps up there that are the same size of the ones that are used on these notices of classification here?

A. We have three of these that are the proper stamps to use. Here is a stamp here that is an improper stamp but was used on those cards that were introduced in evidence, and this stamp here was always kept in one of the girl's desks.

Q. Then this stamp here that you have brought from your office evidently was used by someone on these blank notices of classification?

A. Yes, sir.

Q. There is no doubt about that, is there, in your judgment?

A. No, sir.

74 Q. You say these notices of classification, that they could total as many as five or six times the 6400 descriptions of the registrant or registration certificate; your classification could total thirty or forty thousand?

A. They use five or six of those to one of the registration cards.

Q. Do you mean then that you have 6400 people registered, five times that, or as many as say 40,000, of these

notices of classification, have gone through your office and you say, as I understand your testimony, that at no time are any of your employees ever permitted to place a stamp in the left-hand corner on the face of this such as was done in the seven or eight cards that were found here?

A. No, sir.

Q. Of course, your girls never did make a mistake, did they?

A. It is not the idea of making a mistake. It is knowing that a stamp like this is the correct stamp to use and this is the incorrect stamp, this stamp being on the top of the desk all the time, and this stamp being in the desk drawer, and this stamp is not being used over once a day at the most, and this one is being used forty or fifty times a day, well, more times than that. The girls would use this, I would say, every fifteen minutes during the day.

Q. This could have been stamped on there before you were ever employed there, couldn't it?

75 A. I don't think so. I am not going to say it couldn't be, but I am going to tell you what the regulations are. The regulations then were the same as they are now and a person don't go out of their way to do something wrong normally.

Q. As I understand your testimony, you are not supposed to put that stamp on there until you send these notices out.

A. That is right.

Q. But what I am asking, these stamps could have been made up here on the face of this by someone in your office long before you were ever connected with that department. Is that possible?

A. Well, I don't know what other people would do. Anything is possible in this day and time. I know it has not been done since I have been there.

Q. What I am getting at is, you had this stamp there in the office when you came there?

A. Yes, sir.

Q. And the regulations were the same?

A. To use a proper stamp.

Q. I understand that, and the cards were the same?

A. Yes, sir.

Q. So that it is possible, is it not, that these blank notices of classification which were exhibited to you could have been

stamped improperly by someone long before you were ever in the employ of that office, is that right?

A. What do you mean "improperly"?

76 The Court: I think the Court knows what you mean.

A. It means they could have a dater stamp on there with the wrong date on it but they couldn't use the stamp that was used on these other cards.

Q. (By Mr. Hyde) Did you mention the lady's name of McCollum?

A. Yes, sir.

Q. Do you know where she has lived the past two years?

A. I know where she lives now and when she came to work for us. She lives at the same place that the defendant lives and she came to work for us after these were supposedly stolen from the office.

Q. That is a conclusion, is it not?

A. No. I saw those cards before she went to work.

Q. Do you know of your own personal knowledge that these cards were stolen from your office?

A. No, I wouldn't say that I know they were stolen but I will say that if they were not stolen from the office they were stolen from some other office and were brought into our office and used our stamp on the card.

Q. What you want the Court to understand is that the stamp itself was used in your office? That stamp was used by someone outside of your office?

77 A. Yes, sir.

Q. And that your stamp was used?

A. Yes, sir.

Q. But you do not mean to say these blank cards, these blank registration certificates were stolen from your office?

A. No, I would not swear to that.

Q. You don't know of your own *personaly* knowledge, do you, that the defendant ever used any of the stamps you had there?

A. No, sir.

Q. Or ever saw these cards until he had them up there at this place where this lady worked who worked for you?

A. She was the latest employee we put on. She has only been there two months. She was hired from the civil service

register upon Mrs. Flippo resigning to go with her husband when he received his overseas orders out in California.

Q. Of course, you never authorized any of your employees to take any of these blank pieces of paper out of your department, did you?

A. No, sir.

Q. They are forbidden from doing that, aren't they?

A. Yes, sir.

Q. They are forbidden to take pencils or any other merchandise belonging to the government away from your office, aren't they?

A. Yes, sir.

78 Q. Do you know whether any of them ever did that?

A. I never have known any one of them to do that, because they all have automatic pencils. I don't mean taking pencils, I mean taking these things.

Q. (By Mr. Shelton) You don't know of any of your employees ever taking any of these cards away?

A. No, sir, if they did they would not be there.

Q. Neither are you testifying these cards were not stolen from your office, are you?

A. No, sir.

Q. The code number to which you have reference is 84 and 109, is it not?

A. Yes, sir.

Q. On the stamp marked on Exhibit 19 as incorrect?

A. Yes, sir, one designates the state and the other the county and the seven is the draft board in the county.

(Witness excused.)

THOMAS G. MELVIN was thereupon called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Shelton) State your name.

A. Thomas G. Melvin.

Q. You are a special agent of the Federal Bureau of Investigation?

79 A. Yes, sir.

Q. Are you acquainted with the defendant Harris?

A. I am.

Q. When did you first make his acquaintance?

A. On July 20, 1944.

Q. Where?

A. At 2308 North Ellison Street when he was placed under arrest.

Q. At the time that you made his acquaintance did you have any warrant of arrest for him?

A. I had two, yes, sir.

Mr. Shelton: Now, if the Court pleases, we would like permission of the Court, with the agreement of counsel, to introduce in evidence either photostatic or certified copies or copies of those warrants.

Mr. Hyde: It is perfectly all right. We want them introduced ourselves.

The Court: You can use those or I will permit him to have copies made.

Mr. Shelton: We have no objection to using them if they are correct.

Mr. Hyde: I got them from your office directly, certified.

Mr. Shelton: However, I have never had a copy of the motion yet.

80 The Court: You can check them and see if they are correct. They will be admitted in evidence.

Q. (By Mr. Shelton) Prior to going there to make the arrest had you certain other information in regard to the crimes committed?

A. I did.

Mr. Hyde: I wish to object to that as incompetent, irrelevant and immaterial and ask the Court to instruct the witness not to answer until I have made my objection.

The Court: Yes, do not answer until counsel has had a chance to object. Overruled.

Mr. Hyde: Exception.

(Question read.)

A. I did.

Q. (By Mr. Shelton) Had you made an investigation of the two crimes charged before you had warrants issued?

A. I had.

Q. Did you sign the complaint, or do you recall?

A. No, the complaint was signed by Mr. Irwin, I believe, special agent Irwin.

Q. About what time of day did you get there?

A. It was approximately 1:30 p. m.

Q. What were the particular crimes these warrants were issued for?

81 A. One charged the violation of the mail fraud statute and the other charged the violation of the National Stolen Property Act.

Q. Are you familiar with the facts charged there in *onnection* with—

Mr. Hyde: I object to that for the reason his answer is not the best evidence and the warrants themselves are the best evidence.

The Court? What was the question?

Mr. Shelton: I asked him if he was familiar with facts or the basis of the complaint in the warrant?

The Court: Overruled.

Mr. Hyde: Exception.

Q. (By Mr. Shelton) Are you familiar with the facts charged in connection therewith?

A. Yes, sir, I am.

Q. After you arrived at his place at 1:30, what was the first thing you did?

A. I told him that I was a federal officer and that he was placed under arrest.

Q. Was he shown the warrants?

A. He was.

Q. Were they read to him?

A. He was given the warrants to read and he read them.

Q. Now, after he had read the warrants did you make a search, you and the other agents present, of his

82 premises?

A. Yes, we did. I, however, was absent part of the time.

Q. What other agent assisted in that search?

A. Special agent James Ware and three other special agents.

Q. Was that search made soon after the arrest?

A. It was. It was made instantly thereafter.

Q. Did you help in making that search?

A. Yes, I did, although, as I stated, I was gone part of the time I did help.

Q. Now, in the search that you made, what were you looking for?

A. We were looking for two $10,000 cancelled checks of the Mudge Oil Company which our investigation established had been stolen from the offices of the Mudge Oil Company, probably by the defendant.

Mr. Hyde: Just a moment. Will Your Honor instruct the witness not to say that because that is in violation of the law. It is not responsive to the question, and it is a conclusion on his part, and I ask the Court to strike it from the record.

The Court: It will be stricken from the record.

Mr. Shelton: That part where he said it was probably the defendant?

The Court: Yes.

Q. (By Mr. Shelton) Well, to clarify that, I will ask you if you did not have some evidence that it was the defendant?

83 Mr. Hyde: To which we object as incompetent, irrelevant and immaterial, not the best evidence, and hearsay.

The Court: As I understand it, he was charged with the crime of forging—

Mr. Hyde: Violation of the mail fraud statute.

Mr. Shelton: Defrauding the Mudge Oil Company and forging a bogus check.

Mr. Hyde: But not a violation of the National Stolen Properties Act.

The Court: That is true.

Mr. Hyde: Like the witness said a moment ago—

Mr. Shelton: Yes, I think he would start with that too.

The Court: I know I read the charges when I was going over the briefs.

Mr. Hyde: Causing the checks to be sent through the mail, then interstate commerce.

The Court: That is a mail fraud charge.

Q. (By Mr. Shelton) Is that correct, Mr. Witness?

A. It is my recollection he is also charged with a violation of the National Stolen Property Act. I may be incorrect, however.

84 The Court: I believe both of them are under the mail fraud statute.

Mr. Hyde: Yes, sir.

Mr. Dierker: One of them is the interstate transportation of a forged and altered instrument.

Mr. Hyde: That is right.

Q. (By Mr. Shelton) What else were you searching for, Mr. Witness?

A. We were searching for any means that might have been used to commit these two crimes, such as burglar tools, pens, or anything that could be used in a confidence game of this type.

Q. Now, did you ever see the government's exhibits 1 to 18?

A. Yes, I did.

Q. Where did you first see them?

A. I first saw them shortly after Mr. Ware found them in a bureau drawer in the defendant's residence at 2308 North Ellison.

Q. You didn't find them yourself?

A. No, I did not.

Q. Was the envelope in which they were contained open when you first saw the envelope?

A. Yes. When I first saw them it had been opened.

Q. And is this the envelope?

A. This is the envelope in which they were found,
85 and the defendant admitted this was in his handwriting.

Q. This identification mark on there, did you sign that?

A. No, Mr. Ware signed it. I can identify the envelope.

Q. Was that the envelope on the inside of the one the court is examining?

A. Yes, it was.

Q. Of course, Mr. Ware is in a better position to explain the exact appearance of this at the time they were found than you are?

A. Yes, sir.

Mr. Shelton: We would also ask permission of counsel to introduce in evidence copies of the two complaints on which the two warrants were issued.

Mr. Hyde: Copies of what?

Mr. Shelton: The complaint.

The Court: Instead of the originals.

Mr. Hyde: That will be perfectly all right.

The Court: They will be admitted in evidence.

Mr. Hyde: They are attached to copies of our motion.

Mr. Shelton: If they are, we will let those be admitted, the warrants and complaints attached to defendant's motion to suppress the evidence will be considered in evidence here as exact copies of the originals.

The Court: They will be admitted by agreement.

Cross Examination.

86 Q. (By Mr. Hyde) You don't even know, do you, Mr. Witness, what you did charge this defendant with before the United States Commissioner, do you?

A. It was my understanding they charged a violation of the National Stolen Property Act and the mail fraud statutes, two warrants.

Q. Well, in any event, the record will speak for itself, will it not?

A. Yes.

Q. You signed the complaint. Did Mr. Irwin sign it?

A. My best recollection is Mr. Irwin signed it. I may have signed it too.

Q. Now, then, you came back down in the middle of the afternoon on the day you procured these warrants of arrest and obtained a search warrant over your signature to search this man's automobile, didn't you?

A. I did.

Q. And stated, in substance, in that application, and affidavit you filed under oath what you were seeking, did you not?

Mr. Shelton: To which we object as being incompetent, irrelevant and immaterial and not germane to the issues in this case.

The Court: Overruled.

Q. (By Mr. Hyde) Did you do that?

A. Yes.

87 The Court: I can't see how it has anything to do with this matter.

Mr. Hyde: What I expect to show is that he was searching with a search warrant the automobile for exactly the same things which he was searching the house for.

The Court: I will let you introduce that search warrant. Will you agree, Mr. Shelton?

Mr. Shelton: Yes, he may introduce it and the warrant subject to our objection as being incompetent, irrelevant and immaterial, which I understand is overruled.

The Court: You can correct it if it should be found not to be a correct copy.

Mr. Hyde: I might state this is a duplicate original, also procured from the United States Attorney's office.

Q. (By Mr. Hyde) Now, were you seeking anything in your search of the automobile other than what you were seeking in the house?

A. No.

Q. In other words, you had this man under arrest and in the middle of the afternoon you came down to the United States Commissioner's office, did you not, to obtain a search warrant to search his car. That is true, isn't it?

A. That is true.

88 Q. And you were unable to find anything in the house concerning the charge or charges that you had him arrested for, that is true, isn't it?

A. No.

Q. Had you seized any checks of the Mudge Oil Company, any blank checks or any cancelled checks of the Mudge Oil Company?

A. No.

Q. You had this man charged with using the mails to defraud, causing these checks to go through the United States mails, did you not?

A. Yes, sir.

Q. Now, did you expect to find the letter which contained the checks, the blank envelope that included the checks? Did you expect to find that at his place?

A. No.

Q. Did you expect to find the check itself there?

Mr. Shelton: What check?

Mr. Hyde: The $25,000 check.

A. (By the witness) We thought we might find a photostatic copy there.

Q. (By Mr. Hyde) That is what you were looking for, was it?

A. We were looking for anything—

89 Q. That you might find?

A. No, anything which would indicate a violation of the mail fraud statute and the National Stolen Property Act.

Q. You didn't have him charged with that, did you?

A. That was the violation we were investigating.

Q. Did you have him charged with that, or do you know?

A. That is my best recollection.

Q. At this man's place, there was a bedroom and a living room?

A. Yes.

Q. Was he in the living room?

A. Yes.

Q. Did you arrest him in the living room?

A. Yes.

Q. Did you handcuff him in the living room?

A. Yes.

Q. Did you make him stay in the living room?

A. Not all the time, no. He moved around.

Q. Was he handcuffed from 1:30 or 2:00 o'clock until 7:30 or 8:00 o'clock that night in his own house?

A. No, I don't think it was that long.

Q. Did you come back to the United States Commissioner's office with these search warrants and he insisted on writing upon the original that you returned and filed in this court between 6:00 and 7:00 o'clock at night and
90 he was still under arrest and still handcuffed. Did he do that?

A. The search warrant?

Q. On the search warrant itself.

A. I don't recall that.

Q. And you have insisted, have you, not, many times since his arrest and since he has been out on bond that he ought to bring it to you and give to you the copy of that. Have you done that?

A. No.

Q. Well, in any event, if he insisted upon signing his name upon the search warrant that you returned and filed with the United States Marshal and the clerk, that will speak the truth, will it not, if his signature is on there and the time, if it was written in your presence, will it not?

A. Yes, it will.

Q. Was it written in your presence?

A. I don't recollect.

Q. How long would your tell the Court you kept this man handcuffed in his living room with your guns drawn on him?

A. The gun was holstered as soon as the handcuffs were put on. It couldn't have been over five minutes.

Q. How long did you keep him handcuffed and keep him in the living room?

A. Well, I will say I wasn't there during the en-
91 tire time of the search.

Q. When did you leave?

A. I don't recall definitely. I think probably after half an hour.

Q. As a matter of fact, you didn't go down to the United States Commissioner's office until four o'clock, did you?

A. Yes, but I was in the United States Attorney's office drawing up search warrants prior to that time.

Q. You went out there at 1:30, and how long did you stay, would you say?

A. Oh, I would say practically half an hour.

Q. Then you came back at what time?

A. Around 5:00 I believe.

Q. How long did you stay?

A. Until around 6:30, I believe it was.

Q. Did you take the defendant directly from his home to the jail?

A. No, we were making arrangements with the United States Commissioner to arraign him as soon as possible, and we had some difficulty, encountered some difficulty in locating the Commissioner, so that is why we stayed out there longer than we would have otherwise.

Q. You didn't stay out there with four other agents and break into all of his furniture and equipment out there?

A. We were just making a thorough examination
92 of the premises.

Q. How many rooms are there in this place?

A. As I recall it, there are a living room, bedroom, kitchen and a bath.

Q. Did you go into the bedroom, lift up the mattress, lift up the carpets off the floor and search everything in his bedroom?

A. Yes, I think I said the search was thorough.

Q. I understand, but I want to go into the details of it. You took the sheets and the pillow cases and everything off the bed and looked under the mattress and in between the sheets and pillows and in the closet completely, didn't you? Isn't that a fact?

A. I don't recall the exact details that you mention now, but as I say, I don't remember. I wasn't there all the time but the search was as thorough as we could make it.

Q. Did you go through the linen closet where he keeps his clothes, his suits?

A. I believe we did.

Q. You went through the kitchen and looked under the cover?

A. You mean I did personally?
Q. It was done under your direction?
A. Yes, sir.
Q. You ordered that done, did you?
A. Yes, sir.

Q. You assigned one man to each room and told
93 them to "tear the joint down and find this stuff"?

A. No, I didn't. I told them to make a thorough search.

Q. What room did you search?

A. I didn't search any room particularly. I supervised it largely.

Q. And in this indictment it is alleged that these certificates which have been introduced in evidence were concealed in an envelope on which he had written "George Harris, personal papers" and hidden in the second drawer of the small bureau in the bedroom of his apartment. Is that true?

A. Yes.

Q. And the paper was sealed, the envelope was sealed, wasn't it?

A. It is my understanding it was sealed. As I said, I wasn't actually there when it was found but when I saw it the seal was broken.

Q. Did you break it?
A. No, I didn't break it.
Q. Did you authorize it be broken?
A. Not specifically, no.

Q. Were you present in the office of the United States Attorney when a letter that was taken from his person was opened?

A. There was no letter taken from his person.
94 Q. Where was it taken from?

A. It was taken from the office down in the Perrine Building, 424 Perrine Building.

Q. That is Mr. Otis Garrett's office, isn't it?
A. That is right.

Q. You searched that office and found a letter that came through the mail to him, didn't you?
A. That is correct.
Q. You also forced him to open that letter?

A. We didn't force him to open it. He volunteered to open it.

Q. You seized that leter, did you not, down at this office you mentioned, 424 Perrine Building?

A. Yes.

Q. Did you find any checks, stubs, or anything connected with the violation of the statute for which he was under charge down there?

A. No.

Q. You were the one in charge of this raid out there. Did you know the statute required you to furnish this defendant with an inventory of everything that you took?

A. I made an appointment with him to furnish that but he didn't keep the appointment.

Q. Did you make an inventory to furnish it to him at the time you had him out there under arrest?

95 A. No.

Q. Is it your understanding that you, as an officer of the FBI have a right to take merchandise or anything and take it down to the office and then ask him to come down later after he gets out of jail and you will give him an inventory?

A. I thought things would be expedited by having him come down to the office.

Q. You had five men out there. You were there from 1:30 in the afternoon until 6:00 or 7:00 o'clock at night, weren't you?

A. Yes.

Q. Why didn't you furnish him a list of the things you took from him?

A. Because I thought that would be a better way to handle it; that he would be satisfied, he had a complete list of everything.

Q. Would he know everything you men took there when you had him handcuffed in the front room?

A. He was present when everything was taken.

Q. Did you let him go around with you when you made this search in the various rooms?

A. My best recollection is he did.

Q. In other words, four men were searching four differ-

ent rooms at the same time and you expected this
96 man to be in every room at the same time you men were making this search to find out what you took. Is that right?

A. As I say, I wasn't there during the entire time.

Q. You didn't furnish him a list, did you?

A. No, sir.

Q. And you haven't to this good day, have you?

A. Because he failed to keep his appointment then.

Q. You wanted him to come to your office. As a matter of fact he came to your office and you didn't offer to give him back everything you had seized? You didn't furnish him an inventory and the only thing you gave back to him was his own registration certificate. Isn't that right?

A. No, I think we furnished him certain numerous other things.

Q. Why didn't you give him an inventory then?

A. Because as I said, we had an appointment with him later to give it to him.

Q. He went to your office on two different occasions to get this stuff and you gave him some of the things back but you refused to give him an inventory, didn't you?

A. No, I did not.

Q. You haven't given it to him yet, have you?

A. That is because he failed to keep that appointment.

Q. He came up there and talked with you, didn't he?

A. He did because he had certain specific things he
97 wanted back which we returned to him.

Q. Did he ask you to furnish him a list?

A. No, he did not. I volunteered to do it.

Q. But you didn't do it?

A. For the reasons I have stated.

Q. Since the date of this man's arrest there has been a federal grand jury convened in this district, has there not?

A. Yes, there has.

Q. And you had this man arrested and charged with the violation of the mail fraud statute, didn't you?

A. Yes.

Q. The information you volunteered a moment ago, that this man broke into the Mudge Oil Company's office and stole some checks, did you tell that to the grand jury and secure an indictment against him?

Mr. Shelton: We object to that as incompetent, irrelevant and immaterial and not within the province of this witness.

The Court: Yes, I think it is immaterial.

Q. (By Mr. Hyde) In any event, this defendant is not charged by indictment from this last grand jury, or any grand jury, with a violation of the mail fraud statutes, is he, or any offense you had him charged with back at the time you arrested him at his apartment. That is true, isn't it?

98 Mr. Shelton: We object to that as being incompetent, irrelevant and imaterial, not proper evidence.

The Court: I think it is incompetent. You admit that to be a fact, and if he wants it in the record I will let him put it in. I am not going to consider any incompetent testimony.

Mr. Shelton: I think anything pertaining to that is incompetent. I don't even admit it at all.

The Court: Do you admit that to be a fact, if it is competent? I am not going to consider any incompetent testimony that goes in here, but I find sometimes in court cases where there is no jury it saves time to permit testimony to go in rather than exclude it.

Mr. Hyde: The only thing about it, I would be forced to call the clerk, even though he objected to it, so I am just trying to save time. Do you still object?

Mr. Shelton: Yes, sir.

The Court: Objection sustained.

Mr. Hyde: Exception.

Q. (By Mr. Hyde) Now at the time you made this arrest you did not arrest him at all for the violation of the Selective Service Act, did you?

A. No.

Q. You did not have any information directly or indirectly, did you, that George Harris, the defendant in

99 this case, had these cards in his possession, these registration certificates, did you?

A. No.

Q. And you don't know of your own personal knowledge, or even heresay, of a man in the United States, anywhere in this country, who has a registration certificate, that is in those clasifications, that got it directly or indirectly from my client, do you?

Mr. Shelton: Objected to as improper cross examination.

Mr. Hyde: It goes to the very essence of the matter he was arrested for.

Mr. Shelton: That is an unanswerable question and improper cross examination.

The Court: It would not be necessary to prove that. I will let him answer it though.

A. (By the witness) I don't understand the question.

Q. (By Mr. Hyde) Do you know of anyone in the United States, any man in the service or not in the *service,* that has a classification card or registration certificate that he got from my client, the defendant over here?

A. No, I don't.

Q. You didn't have any information about that, did you?

A. No.

Q. Now, if you had had any kind of information about that at the time you went out to his home, you would have charged him with that crime, wouldn't you?

Mr. Shelton: We object to that.

The Court: Sustained.

(Witness excused.)

JAMES C. WARE, was thereupon called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Shelton) State your name.

A. James C. Ware.

Q. Are you a special agent of the FBI?

A. I am.

Q. Were you present on the date the defendant was arrested?

A. I was.

Q. What was the basis of your knowledge on which he was arrested and when was the arrest made?

A. The warrants were issued as a result of a complaint charging the defendant with violations of the National Stolen Property Act and the mail fraud violation.

Q. Do you know who signed the complaint?

A. I believe special agent Irwin.

Q. There has been some discussion here with reference to the National Stolen Property Act indicating that
101 actual complaint and charge in this case was not the National Stolen Property Act. Now, I will ask you if Title 415 or Title 18, Section 415, which is the section number and title shown in the complaint, is the Act which is commonly referred to by the agents of the FBI as the National Stolen Property Act?

A. The facts set out in the complaint charge the violation of the Act, as I understand it.

Q. And that is the name by which you refer to that Act, is it not?

A. That is right.

Q. Now, after the arrest of this defendant you participated in a search of his premises, did you not?

A. I did.

Q. Tell the Court what you personally were searching for.

A. I was searching for anything which may have been the means through perpetrating any of the charges alleged in the complaints.

Q. Did you find Government's Exhibits 20, 21 and 1 to 18, inclusive?

A. I did.

Q. Tell the Court where you found them.

A. These were taken from the bureau drawer of George Harris' bedroom, the second drawer in his bureau.

Q. Explain to the Court how they were arranged.

A. The cards were inside a small envelope, inside
102 of the outside envelope, and it was sealed there.

Q. (By the Court) The green cards, they are in the small envelope?

A. Yes, sir.

Q. (By Mr. Shelton) Where in the bureau drawer did you find that exhibit?

A. It was in the second drawer at the bottom under some underclothes.

Q. Was the drawer closed?

A. Yes, sir.

Q. You opened the drawer and found those exhibits under some clothing?

A. Yes, sir.

Q. Were they hidden from your view until you removed the clothing?

A. They were.

Q. Now, can you specify anything in particular that you were searching for that would have been the means to commit the offenses that were charged? What did you have in mind particularly, if anything?

A. It is my understanding that we were searching for two blank checks and also searching for writing materials, burgler tools or anything of that nature which may have been used in perpetrating the crimes alleged, charged.

Q. I will ask you if in your search you found some 103 other articles.

Mr. Hyde: To which we object as incompetent, irrelevant and immaterial, if the Court please, the same having been seized in violation of the defendant's constitutional rights, an invasion of his rights under amendments 4 and 5, and for the further reason that the evidence which they are now describing and which has been described already by the witness, was not in furtherance of anything in connection with which he was then being arrested and charged with.

The Court: Overruled.

Mr. Hyde: Exception.

Q. (By Mr. Shelton) I hand you here certain articles of merchandise. State whether or not you found those in his residence.

A. Yes, sir.

Q. State what they are and how many.

A. There are two pen points inside of the envelope now. These two tracing pens—

Mr. Hyde: I object to the word "tracing." That is a conclusion of this witness.

The Court: I will sustain the objection. You can describe the pens.

A. Two pens with removable points—

Mr. Hyde: It speaks for itself and I object to
104 the description.

Q. (By Mr. Shelton) Do you know of your own knowledge what they were used for?

Mr. Hyde: I object to that—

The Court: I will sustain the objection.

Mr. Hyde: He can answer it yes or no.

Q. (By Mr. Shelton) Do you know of your own knowledge what pens like those you hold in your hand are used for.

A. No.

Q. What else do you have?

A. Five fountain pens, one ordinary pen; a pen and pencil combined.

Q. Now, I hand you certain other instruments here contained in this envelope and ask you to state if you found those there at his place?

A. Yes, sir, they were found there also.

Q. What are those, if you know?

A. These are small pieces of celluloid.

Q. Do you know of your own knowledge what they are used for in the confidence game?

Mr. Hyde: Answer that yes or no.

A. No.

Mr. Shelton: We wish to introduce all these in evidence for whatever value they may have, and as counsel says, let them speak for themselves.

105 Mr. Hyde: To which we object for the same reason, incompetent, irelevant and immaterial, and seized

in violation of the constitutional rights of the defendant and unoffending in themselves.

The Court: Overruled.

Mr. Hyde: Exception.

Q. (By the Court) Where did you find these?
A. (By the witness) They were in the dresser.
Q. (By Mr. Shelton) I hand you certain other exhibits which I will ask to be identified as Government's Exhibit No. 22, a bundle. I hand you Government's Exhibit 22 and ask you if you found that on the defendant's premises.
A. I did.
Q. Where was that?
A. It was in a dresser drawer in the bedroom.
Q. I will ask you to tell the Court what those are and if you know what they are used for, of your own knowledge, and if you have superintended the use of them yourself?

Mr. Hyde: To which we object as incompetent, irrelevant and immaterial, and not binding upon this defendant.

The Court: Let him answer what they are.

A. These are 27 pieces of celluloid.
Q. (By Mr. Shelton) What are they commonly known as in the confidence game?

Mr. Hyde: Objected to as incompetent, irrelevant
106 and immaterial and there is no evidence in this case that my client is a confidence man.

Mr. Shelton: We have him charged with stealing in this case.

Mr. Hyde: You haven't proved it.

Mr. Shelton: We will prove these are burglar's tools if you will let me.

The Court: He can't testify what these were used for because he doesn't know.

Mr. Shelton: Do you know of your own knowledge what those can be used for?

Mr. Hyde: To which we object again. An axe can be

used to kill a man and it can be used to chop wood. It is incompetent, irrelevant and immaterial and no foundation laid to show this court from this record that my client is a confidence man or had anything to do with this theft.

Q. (By the Court) Where did you find them?

A. They were in the bedroom in the dresser drawer.

Mr. Hyde: I renew my objection.

The Court: I will let the testimony in at this time. If I come to the conclusion it is incompetent I will strike it and not consider it.

Mr. Hyde: Exception.

A. They can be used as burgler tools for entering an office, most offices.

107 Q. (By Mr. Shelton) Have you used them to open a Yale lock yourself?

A. I have.

Q. Can you demonstrate to the Court how they can be used as burglar tools to enter an office and open a lock?

A. I can.

Q. Will you be glad to do that in the presence of the Court—

Mr. Hyde: To which we object as incompetent, irrelevant and immaterial and not binding upon this defendant, on the same principle that I cited, that an axe can be used to cut wood and also to kill a man.

The Court: Objection sustained. It is not necessary that he make that demonstration to the Court.

Mr. Shelton: I think the demonstration should be made in the record to show they can actually be used for that purpose for the court to see.

The Court: At this time I will permit him to do it. If I later find it is improper I will exclude it and not consider it. You may demonstrate it on this door right here.

Mr. Shelton: Let the record show that in the presence of the Court, the defendant and his counsel, the witness on the stand demonstrated the opening of the back door to

the court room, which has a lock similar to a Yale
108 lock, and that the night lock was fastened, with the instrument which we offered in evidence called by the witness burglar tools, and at this time we wish to introduce them, as well as these other exhibits found in the course of the search.

The Court: They will be admitted.

Mr. Hyde: To which we object.

The Court: Objection overruled. I will exclude them if I come to the conclusion they are not competent.

Q. (By Mr. Shelton) Was the defendant asked whether or not it was his writing?

A. Yes, sir.

Q. Did he identify it?

A. He identified it as his own handwriting.

Q. That is the part of the envelope marked "George Harris, personal papers"?

A. That is right.

Q. The other writing on the envelope was placed there by whom?

A. Placed there by me.

Q. For what purpose?

A. Purely for identification.

Q. And that reads "7-20-44 taken from the second drawer."

A. (Reading) "Small bureau in bedroom at 2308 North Ellison Street, Oklahoma City, James C. Ware, spe-
109 cial agent, FBI."

Q. Was the defendant present when these different exhibits here were found by you?

A. He was in the livingroom. May I describe that?

Q. Yes, you may.

A. The bedroom and living room are connected by a large double door and he was seated in the west end of his living room in a position where he could see into the bedroom and watch our actions.

Q. Did he make any statement in your presence in regard to any of those exhibits?

A. Nothing, except he was asked specifically as to these classification cards, at which time he said he found them—

Q. Never mind about that.

Mr. Hyde: Let him answer. I insist that go into the record. He said he found them, didn't he? Is that what you said?

A. That is what I said.

Q. (By Mr. Shelton) Did he volunteer the statement he had found these classification cards when asked about them?

A. Yes.

Q. Now, are you familiar with the Selective Service Act?

A. In a general way.

Q. You are familiar with what is generally known as a violation of the Selective Service Act?

110 A. Yes, sir.

Q. As soon as you found that exhibit there, the envelope with the cards in it, did you open it?

A. I did.

Q. Did you show them to the other agents present?

A. Yes, sir.

Q. And also showed them to the defendant?

A. Yes, sir.

Q. And that is when he made his explanation?

A. Yes, sir.

Q. Did you know in a general way when you found those that the possession of them was a crime under the Selective Service Act?

Mr. Hyde: To which we object as incompetent, irrelevant and immaterial, his knowledge or lack of knowledge of the law is immaterial in this case.

The Court: I think it is immaterial but I will let him answer. It would not be prejudicial.

A. Yes.

Cross Examination.

Q. (By Mr. Hyde) What time did you go out there?

A. At approximately 1:30.

Q. What did you go out there for?

A. I was assisting Mr. Melvin in serving the war-

111 rants on Mr. Harris.

Q. You were in company with three or four other

agents, weren't you, four others besides yourself? There were five of you?

A. At which time?

Q. When you went out to this place.

A. I went with Mr. Melvin.

Q. When you got out there there were five of you there, weren't there?

A. Mr. Melvin and I were there alone at the time of making the arrest.

Q. And the three others came—

A. Later.

Q. When you went out there you put this man under arrent, when you went in the living room, and handcuffed him and sat him down, didn't you?

A. Yes, sir.

Q. Mr. Melvin told him if he made a move he would kill him, didn't he?

A. I didn't hear that.

Q. You kept the handcuffs on him from the time you got there at 1:30 until seven o'clock, didn't you?

Mr. Shelton: To which we object as being incompetent, irrelevant and immaterial, whether they had him handcuffed or not.

112 The Court: Overruled.

Q. (By Mr. Hyde) Did you do that?

A. I left for some period of an hour or so and I can't speak for that time but during the rest of the time he was handcuffed.

Q. The five agents that were out there all told, each of you were assigned by Mr. Melvin to make a search of the rooms, weren't you?

A. That is right.

Q. Which one did you search?

A. The bedroom.

Q. The defendant was in the living room, wasn't he.

A. Yes, sir.

Q. Handcuffed?

A. Yes, sir.

Q. You were out there searching for goods, wares, merchandise, articles, or anything in connection with the use

of the mails to defraud, and also in connection with the violation of Section 415 of Title 18?

A. Yes, sir.

Q. And that is what you refer to as the National Property Theft Act?

A. National Stolen Property Act.

Q. In any event you were there in connection with the use of the mails and other transactions connected with
113 the theft of checks or monies, funds that originated with the Mudge Oil Company transaction, weren't you?

A. Yes, sir.

Q. That is what you were out there for, isn't it? You had no knowledge or information, direct or indirect, of any kind or character that he had any selective service cards in his bureau drawer or anywhere else, did you?

A. I had none.

Q. And you had no information, directly or indirectly, that the defendant over here had ever furnished blank registration certificates or notices of classification to any man in the United States, had you?

A. I had none.

Q. You fellows seized his registration card, didn't you?

A. I didn't do it.

Q. You know it was taken, don't you?

A. Yes, sir.

Q. It was later returned to him. Your office checked up on that, didn't it?

A. I didn't check on it.

Q. Well, do you know whether or not your office did?

A. No, sir, I do not.

Q. Did you find anything wrong with his registration card?

A. I can't answer the question.

Q. Do you know whether or not your office did?

114 A. No, sir, I do not.

Q. Now, this indictment charges that these registration classification notices, as well as the registration certificates, were sealed in an envelope on which he had written "George Harris, personal papers," and hidden in the second drawer of the small bureau in the bedroom of

the apartment where this defendant lived. That is true, isn't it?

A. Yes, sir.

Q. You had been directed by your superior officer, you and the other agents who were out there that day, to make a thorough search of this place, weren't you?

A. Yes, sir.

Q. Looking for anything you could find in connection with the violation of the law for which he was then arrested, weren't you?

A. Yes, sir.

Q. You have previously testified you had no information, directly or indirectly, that he had these service cards in his bureau drawer?

A. That is right.

Q. They are in blank, aren't they?

A. Yes, they are in blank.

Q. With the exception of the printed matter up in the left-hand corner on the face of the card itself?

A. That is correct.

115 Q. You had to get into his bureau drawer. It was closed, was it?

A. Yes, sir.

Q. He had the clothes in there, didn't he?

A. Yes, sir, a few pieces.

Q. You had to get under the clothes to find these, didn't you.

A. I did.

Q. Then when you found it, it was sealed in an envelope that has been offered in evidence, wasn't it?

A. That is right.

Q. And you had to break that seal open, didn't you?

A. Yes, sir.

Q. You broke that open at the time, that sealed envelope marked "George Harris, personal papers" having in mind that you might be able to find something in connection with the Mudge Oil transaction. That is true, isn't it?

A. That is true.

Q. And that is what you were looking for, isn't it.

A. Yes.

Q. You then found these other things that had been introduced in evidence, didn't you?

A. Yes, sir.

Q. And they were secreted too, weren't they?

A. Why, yes.

116 Q. This isinglass business?

A. You mean the isinglass?

Q. Yes, that was in his drawer, wasn't it, wrapped up in a little towel?

A. Yes, sir, just like that.

Q. You took that —

Mr. Shelton: Tissue paper.

A. (By the witness) Tissue paper.

Q. (By Mr. Hyde) You took the fountain pens?

A. Yes, sir.

Q. Then you took a great many other things away from him, didn't you, in a bundle about a foot and a half long and about a foot and a half wide away from his house, didn't you?

A. I don't remember that.

Q. This defendant objected strenuously to you people making a search of his home from the time you went there until you left and told you you didn't have any right to do it, and you told him you had a warrant for his arrest and you were going to do it anyway, didn't you?

A. I don't believe he objected strenuously.

Q. Of course, he was handcuffed all the time, wasn't he?

A. That is right.

Q. You didn't threaten to kill him if he didn't sit down, did you?

A. We did not.

Q. Did Mr. Melvin?

117 A. I didn't hear him say that.

Q. How long did he keep the gun on him?

A. Until he was handcuffed.

Q. As a matter of fact, he kept it on him for an hour, didn't he?

A. He did not.

Q. And didn't he direct you men to make a search around there while he held him in there with the gun cocked on him for an hour? Didn't that happen?

A. He did not.

Q. You never made an inventory of the things that were seized out there, did you?

A. No, sir.

Q. Why?

Mr. Shelton: To which we object. If he didn't, he didn't.

Q. (By Mr. Hyde) Did Mr. Harris ask you to furnish him one?

A. No, sir.

Q. He didn't ask you to furnish him a list of the things you were taking from his apartment?

A. No, sir.

Q. Didn't do that at any time?

A. He didn't ask me.

118 Q. Or he didn't ask Mr. Melvin in your presence?

A. Not in my presence, if he made such a request.

Q. Now, at the time you men went out there, you were armed with these warrants of arrest, weren't you?

A. Yes, sir.

Q. Two complaints had been filed and a warrant of arrest issued?

A. Yes.

Q. You had no search warrant, did you, to search his home?

A. No, sir.

Q. Now, at the time you broke open that envelope Mr. Harris told you, did he not, that he had found those cards?

A. Yes, sir.

Q. You have since made an investigation and you found out that an employee of the Draft Board No. 7 lived in this identical apartment that he occupied and lived there immediately preceding the time that he moved there. You found that out, didn't you?

A. I made no investigation. I knew nothing of that until Mr. Bower made the statement this afternoon on the stand.

Q. You mean to say that George Harris didn't tell you that this apartment was occupied by two women that he never saw or heard of in his life and that both of them worked down at the draft board?

A. He did not.

119 Q. You have since found out that two men lived there that worked at the draft board?

A. No, sir.

Q. You didn't know it until this afternoon?

A. It didn't concern me at all. I wasn't interested.

Q. He didn't say anything about that?

A. No, sir.

(Witness excused.)

Mr. Shelton: The Government rests.

Mr. Hyde: Comes now the defendant and at the conclusion of all the testimony offered for and on behalf of the Government and renews his motion to suppress the evidence heretofore filed, and his motion to quash the indictment heretofore filed, and in that connection demurs to all of the evidence offered for and on behalf of the government for the reason and upon the grounds that the evidence is wholly insufficient under the law to show that this defendant violated any law of the United States of America, and that applies to each and every count charged against him, each and every count, and for the further reason that all the evidence for and on behalf of the government is in violation of the fourth and fifth amendments to the constitution of the United States and of the Act of Congress passed on June 15, 1917, and that the offer and *in* reception in evidence by the Court of such evidence on the part of the government was in violation of his constitutional rights as heretofore set forth in the brief filed by the defendant on a motion to suppress and the motion to quash the indictment.

120 The Court: Motion denied.

Mr. Hyde: Exception.

Mr. Hyde: And the defendant further moves to strike from the record all of the testimony with reference to the articles which were offered in evidence on behalf of the government, the same having been obtained by the government agents in violation of law in such cases made and provided, and urged that as an additional ground of the demurrer which we interposed.

The Court: Overruled.

Mr. Hyde: Exception.

The Court: The matter will be submitted. I prefer to consider it.

Mr. Shelton: Are you going to offer any evidence?

Mr. Hyde: No, sir. The defendant rests.

Mr. Shelton: If I did not offer the exhibits, all the exhibits referred prior hereto, they are offered in evidence.

The Court: They will be admitted.

Mr. Hyde: I assume this motion which I have filed to suppress should be marked as an exhibit.

(Thereupon the motion above referred to was identified as Defendant's Exhibit No. 1, being the motion to suppress evidence and the petition to return private papers and books and other property to the defendant.)

121 (No further proceedings were had at this time.)

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122 And Thereafter, and on the 18th day of December, 1944, the trial of the above cause was reopened and resumed at Oklahoma City, before Hon. Stephen Chandler, the appearances being the same as heretofore.

The Court: In connection with this case, I indicated I desired to hear some more testimony on the question of the apartment where these girls lived out there. I got the idea in my mind, as to whether one of these girls who worked at the draft board that lived in this apartment prior to the time the defendant had lived there, and I asked the United States Attorney to clear that matter up. I would like to know one way or the other what the facts are.

Mr. Hyde: Very well.

Mr. Shelton: The Government's position is we have no desire to reopen the case but the witnesses are available and if I understand it correctly, we have them down here at the request of the Court and the case is to be reopened on the request of the Court. Is that correct?

The Court: Yes. I would like to know the facts on that point. While it might not seem material to you, it does to me. There was evidence introduced in the record and I could not come to any conclusion in regard to it.

123 Mr. Shelton: Does the Court desire for me to put the evidence on? Of course, I am familiar with it.

The Court: Yes, I would like to know what the facts are.

VIRGINIA MCCOLLUM was thereupon called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Shelton) State your name.
A. Virginia McCollum.
Q. Where do you live at the present time?
A. I have been living at 1311 Northwest 16th Street.
Q. What is your present business or occupation?
A. At present I am working for Draft Board No. 7 as a clerk.
Q. Did you at one time live at 2308 Ellison Avenue?
A. North Ellison, yes, sir.
Q. Just tell the Court as best you can when you first moved there.
A. Well, in October, October 25, 1942, I moved to 2310 North Ellison.
Q. (By the Court) October 25, 1942. That is next door to this place?
A. Yes, sir, on the north side. I am not positive what day I moved to the south side, but it was approxi-
124 mately the first of May.
Q. (By the Court) May 1, 1943?
A. No, sir, 1944.
Q. 1944. You moved to the—
A. I am not positive of that date.
Q. You moved to the south side. That is 2308?
A. 2308, yes, sir.
Q. Is that a two story apartment?
A. No, sir—well, yes, sir—there are two apartments downstairs and two bedrooms upstairs; two apartments downstairs, one on each side.

Q. You lived there from October 25, 1942 to May 1, 1944 on the north side?

A. I am not positive of that last date. Approximately, I am not positive. We lived on the south side approximately six months.

Q. You think that began May 1, 1944?

A. Around there, yes, sir. I am not positive of that date.

Q. (By Mr. Shelton) You moved from there when?

A. I went and talked to this lady at 1311 Northwest 16th on June 25. That was on Sunday, and I moved on Tuesday evening, the 27th.

Q. (By the Court) You lived at this place from May 1 to June 27?

A. 27th. It was on Tuesday.

125 Q. (By Mr. Shelton) You moved to an apartment nearby?

A. I moved to 1311 Northwest 16th, which is the place where I board and room.

Q. Now, do you know who moved in the apartment at 2308 after you moved away?

Mr. Hyde: Of your own personal knowledge.

Q. (By Mr. Shelton) Of your own knowledge.

A. I talked to the fellow who was going to move down. He came down that evening and I talked to my landlady—

Mr. Hyde: I object to that as hearsay.

Q. (By Mr. Shelton) That is what he told you, the man you talked to?

A. Yes, sir.

Q. Did you talk to him?

A. Yes, sir. He came down that Tuesday evening.

Q. (By the Court) Came down from where?

A. He was rooming upstairs.

Q. Do you know how long he had been rooming upstairs?

A. No, sir, because I didn't know him.

Q. (By Mr. Shelton) Do you see that man in the court room you talked to?

A. No, sir. He is in the Navy, a lieutenant in the Navy.

Q. The man you talked to about moving into your apartment?

A. Yes, sir. He is not in this room.

Q. (By the Court) He was a lieutenant in the
126 Navy?

A. Yes, sir.

Q. (By Mr. Shelton) You don't know whether this man, Mr. Harris, moved in that apartment after you left?

A. No, sir. I never did see him until this morning.

Q. When did you go to work for Draft Board No. 7?

A. September 21, 1944.

Q. That was after or subsequent to the time that you moved out of this apartment known as 2308 North Ellison?

A. Yes, sir.

Q. Do you have the pay roll records to show when you went to work for the draft board?

A. Also the appointment showing when I started.

Q. Do you also have a receipt of some kind to show when you moved into the other apartment at the time you moved?

A. Yes, sir. This is June 26.

Q. This instrument we are looking at here is a receipt that you received from the landlord where you moved. Is that correct?

A. Yes, sir.

Q. And this was dated on the day you moved or before you moved or when?

A. I had to pay it the first of June, 1925, which was Sunday, in order to hold the apartment.

Q. Do you need this?

A. No, sir.

127 Q. (By the Court) It is definite you moved out of this apartment June 27, 1944?

A. Yes, sir, that evening.

Q. You think you moved in May 1, 1944?

A. Approximately. I wouldn't say what date. It was approximately the date.

Q. It was shortly after the first of May you moved into that apartment from across the hall?

A. Yes, sir. I could call my landlady and find out exactly.

Q. Why did you move from the north side to the south?

A. Because it would be cooler.

Q. In the summer time?

Mr. Shelton: I wish to introduce these exhibits in evidence, Government's Exhibit 24, 25 and 26.

Mr. Hyde: No objection.

Q. (By Mr. Shelton) During the time you resided in this apartment in question, 2308 North Ellison, did you have in your possession any classification cards or registration cards of any kind or character?

A. No, sir.

Q. When you left that apartment did you leave any classification cards or registration cards there at the apartment, as far as you know?

A. No, sir.

128 Q. I point out to you Mr. Harris, the defendant in this lawsuit, and ask you if you ever at any time in your life, under any circumstances, let him have any classification cards, or draft cards of Local Board No. 7 of Oklahoma City?

A. No, sir.

Q. Did you ever see the defendant before this morning?

A. Not to my knowledge. I may have met him on the street, but I wouldn't have known him.

Q. Have you, since you have been employed by Draft Board No. 7 taken away from the office any blank classification or registration cards?

A. No, sir, nothing has ever been taken out of there.

Q. Or have you known of or seen any of the other employees who worked there during the time you were employed there, take any blank classification cards or registration cards away from the office?

A. No, sir.

Q. I will ask you if it is not the instructions you are not to do that?

A. That is correct.

Cross Examination.

Q. (By Mr. Hyde) Miss McCollum, you lived for approximately two years in Mrs. Cargill's apartment, did you not?

A. Approximately, a year and a half.

129 Q. As I understand your testimony, you moved over on the north side, which would be 2310, and then you moved over here in April or May?

A. Approximately the first of May; I am not positive.

Q. Into the apartment at 2308?

A. Yes, sir.

Q. Ellison Avenue. And you moved out on Tuesday before July 1?

A. I moved on June 27.

Q. That would be on Tuesday, you said, before July 1?

A. Yes, sir.

Q. But you say that this man did not move into that apartment on July 1?

A. I am not positive. I never saw the gentleman until I came here this morning, to my knowledge.

Q. This lieutenant you referred to, this Navy lieutenant, did you not know he just stayed there one night?

A. I am not positive because I wasn't over there at that time.

Q. You worked at the draft board once before, did you not?

A. I worked at Draft Board No. 1.

Q. You worked at this draft board before you worked at Draft Board No. 7, didn't you?

A. Yes, sir.

Q. How long had you worked at the Draft Board
130 No. 1?

A. It was approximately around the 1st, I believe it was the 1st of March of 1942, to the last of January, 1943.

Q. Then you went to work for the Douglas plant?

A. I went out to OCAD.

Q. All that time you were living with Mrs. Cargill?

A. I was living in Cargill's apartment.

Q. Then you went to work for Draft Board No. 7 after you quit the OCAD?

A. After I moved from North Ellison.

Q. And you say you went to work for that Board in September?

A. The 21st, 1944.

Q. Now, 2308 and 2310 are together, aren't they, that is, just right next door to one another?

A. One is on the north side and one is on the south side of the house.

Q. The buildings are connected, aren't they?

A. There is no way to get through. You have to go outside.

Q. It has the same retaining wall?

You don't go through the same door to get to 2308 and 2310?

A. No, they are separate apartments.

Q. It is in the same building?

A. Yes, the same building.

Q. Now, when you left 2308, did you leave any papers at all there?

131 A. I am not positive. I cleaned up there but I can't swear I took everything.

Q. I will ask you if it is not a fact you left an envelope there in which there was a note, a letter from you or a letter to you from a lieutenant concerning a brief case?

A. No, sir.

Q. Had you loaned your brief case or had anyone loaned a brief case to you?

A. I do not possess one or never did borrow one.

Q. No one left one in your possession with some papers in it?

A. No, sir.

Q. Did you leave in this same envelope some slips, contribution blanks, envelopes for one of the churches?

A. What slips?

Q. You know these little contribution envelopes.

A. What envelopes do you mean?

Q. Did you leave any little blank church envelopes showing the contribution that would be made to the church?

Mr. Shelton: In order to be fair with the witness, I think counsel has those instruments he speaks of and he ought to exhibit them to the witness.

Mr. Hyde: I am just asking if she did have those. I will state to the Court I didn't bring them with me. I have the letter I will exhibit to you.

132 The Court: You may answer.

A. I had envelopes where I gave contributions to the church but if I left them—I might have left them—they might have been old ones.

Mr. Shelton: What church?

Q. (By Mr. Hyde) I don't recall the church. Do you

know whether or not the name of the church was printed on there?

A. I think it was on the outside. I am not positive.

Q. Well, the church is immaterial anyway, but you don't recall any letter you wrote or any letter you received concerning the brief case?

A. I never had any correspondence with a lieutenant and I never had any connection with a brief case.

Q. (By the Court) Who lived there with you?

A. At 2310?

Q. Who lived with you at 2310 and 2308?

A. At 2310, a Mrs. Esther Shaffer.

Q. (By Mr. Hyde) Did Ethel Wiggins live with you?

A. Later on.

Q. Did she live with you at 2308?

A. Yes, sir. Just a few weeks and then we moved across.

Q. (By the Court) Who was the one who lived with you at 2310?

A. Miss Shaffer.

Q. Where does she work?

133 A. She is dental assistant at OCAD.

Q. Did she ever work at the draft board?

A. No.

Q. Who lived with you when you went to 2308?

A. Ethel May Wiggins, employed at Douglas.

Q. Did she ever work at the draft board?

A. No, sir.

Q. (By Mr. Hyde) Is she here now?

A. She is at Douglas.

Q. That is the lady who lived with you at 2308?

A. Yes, sir.

(Witness excused.)

Mr. Shelton: If there is no objection we will withdraw Government's Exhibit 24, 25 and 26, and it is agreed that copies may be substituted. We have two other witnesses available whose evidence is probably competent on the motion to suppress the evidence in this case, and I understand the Court would like to hear their testimony. If that is the Court's desire we will be glad to present them.

The Court: I understand. I don't believe this testimony would be competent as to the guilt or innocence of the defendant in this case. Do you understand what testimony he refers to, Mr. Hyde?

Mr. Hyde: I do not, Your Honor.

134 Mr. Shelton: I will explain to the Court and counsel the nature of the evidence of these other witnesses is that on or about the 6th of March, 1944, these two witnesses saw the defendant Harris in the office of the Mudge Oil Company in Dallas, Texas, and can identify him in their best judgment as being there, which is evidence in connection with, of course, the complaints that were filed against him on which the warrants were issued, that were the basis of the search of the premises in question.

The Court: I don't believe that will be competent on anything except the question of the suppression of this evidence. I think it would be competent on that.

Mr. Hyde: I can't see how it would be competent in this case in either event, Your Honor. If this defendant was being prosecuted for violation of Section 415 of the Penal Code or the conspiracy to commit the substantive offense, I believe not only the substantive offense itself, but also on the conspiracy, as well as this motion we filed to suppress the evidence, it would be competent, but here the Government is seeking to offer testimony and convict this defendant for a violation of the Selective Service Act, wholly unrelated and at a different time.

The Court: I think you are right as to the merits of this case; as to the guilt or innocence of this defendant I don't think it would be proper at all but I will hear it on
135 the suppression of evidence. It may be I will not be able to consider it, but at this time I will let it in, on the question of the motion only, and it will not be considered as to the guilt or innocence of this defendant. It will be considered only on the motion to suppress this evidence as to whether or not I should exclude all this evidence, these instruments that have been introduced in evidence.

Mr. Hyde: Under the Leftwich case, I think Your Honor

will recall in that case they were searching for something connected with the offense for which he was not being prosecuted. In this case, a totally different case, they are seeking to convict him for an offense based upon a warrant issued, wholly unrelated to the offense for which he is now being prosecuted.

The Court: That is the question I will have to decide.

Mr. Hyde: As I understood the ruling—I am not trying to keep the evidence out—I just wanted to keep the record straight. As I understood the observation of the Court made before, that if this property was not stolen property you felt as though the position I had taken based upon the decisions of the Supreme Court, that my motion should be sustained, but in view of the fact that now the Government has raised the question that it was stolen property, therefore, you thought perhaps a different rule should
136 prevail, and it was based upon that we furnished Your Honor with the second brief in which we dealt with those questions. Now they are seeking to offer testimony orally, unrelated to the offense for which he is now on trial and at a different time.

The Court: I certainly agree with you it is not competent to prove the guilt or innocence of this defendant in this case, and I will not consider it for that purpose. I will let the evidence in as perhaps having a bearing on the motion to suppress. I will not consider it on that motion if later on I should determine I should not.

Mr. Hyde: I get your point.

The Court: But I am considering the legal points involved and I have not made up my mind definitely as to what the law is, so I think I had better let this in, and if I find I should not consider it, I will not consider this evidence on the motion. In other words, it may be immaterial.

PAULINE HOWARD, was thereupon called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Shelton) State your name.
A. Pauline Howard.
Q. Where do you live?
137 A. 824 West Tenth Street, Dallas, Texas.
Q. What is your business or occupation? For whom do you work?
A. The Mudge Oil Company in Dallas.
Q. How long have you been in its employ?

Mr. Hyde: I would like to ask that the rule be invoked. I understand there are some witnesses present.

(Hereupon the rule was invoked and the witnesses given the usual admonition of the Court.)

Q. (By Mr. Shelton) Did you state how long you had been employed by that company?
A. Two years. It was two years last month.
Q. And what is the nature of your employment, what are your duties for the company?
A. I do secretarial work for the treasurer and vice president and some book work, keeping of the records and books.
Q. Sometime during the month of March, 1944, did you have occasion to come back to the office late one evening?
A. Yes, sir.
Q. Do you have any way by which you can fix that date?
A. Yes, sir.
Q. Tell the Court what date it was and what time it was and how you fix it.
A. Well, I left the office about five o'clock in the afternoon. I always do—it was at five in the afternoon
138 and I met a girl friend downstairs in the drug store and had a drink with her and talked with her. Then I discovered I had left a magazine upstairs in the office, so she went back up there with me to get it.
Q. About how long was it between the time you met her in the drug store until you went back, give us your best judgment.
A. It was around 30 minutes.
Q. Go ahead.
A. I unlocked the door. The door was locked—

Q. Tell us, if you know, the kind of lock that was on that door.

A. Well, I suppose—I don't know the name of it—my key is a small key with a niche in it. I don't know what you call it.

Q. I will ask you to look at this lock on this door here.

A. Yes, sir. When I leave in the afternoon I flip the button.

Q. Is that similar to the one you have?

A. Yes, sir.

Q. You just flip the button and it is locked on the outside?

A. Yes, sir. You have to use the key.

Q. Would you say this one operates identical to the lock on your door? Examine it and see.

A. Yes, sir. Our door opens the other direction, 139. the other way.

Q. Would your say the lock you just examined on the court room door there operates the same and is identical to the lock on the door of your office?

A. Yes, sir.

Q. Of the Mudge Oil Company. Who was this other lady who was with you on that occasion?

A. Mrs. Edith King.

Q. Is she here with you today?

A. Yes, sir.

Q. Just state in your own words what happened when you got back there to the office. You were to fix the date tell the Court how you fix the date and give us the day of the month this occurred.

A. Well, it was on the 6th because it was on a Monday after I had spent a week end in McGregor, Texas.

Q. The 6th of what month?

A. March, 1944, of this year.

Q. Explain how you fix that date.

A. Well, I talked with my sister and she has a diary she keeps every day, and she shows in her diary that on March 4 and 5, that was Saturday afternoon, and Sunday, that I was at home, and I remember it was the week end before this Monday that Edith and I were having a drink

downstairs after work because I told her about my trip home.

140 Q. It was the Monday following your visit home?

A. Yes, sir. That is why I met her. I don't usually meet her. That is why I can remember because it is unusual for me to meet her after work.

Q. After you went back to the office just tell what happened there.

A. Well, I unlocked the door. I have a key to the office and I heard someone in the office. I heard papers rustle as I was unlocking the door. Our reception room door is close to another door in the inner office and about the same time we opened the door and walked into the reception room, a man that was in the next office, I could see his shadow through the frosted glass came into the reception room, through this other door and I was very surprised that anyone was in the office.

Q. (By the Court) You mean another office in your suite of offices?

A. Yes, sir.

Q. (By Mr. Shelton) Was this man a stranger to you?

A. Yes, sir. I had never seen him before.

Q. Did he have any connection with the office you knew about?

A. No, sir. That is what I asked him.

Q. Had you ever seen him before that night?

A. Not that I know of, no, sir.

141 Q. Tell us what took place there.

A. Well, I asked him what he wanted, or *of* I could help him, or why he was in the office at that time, or something to that effect. I was very startled that he was in the office and I explained to—it seemed to be necessary that I explain, and I explained I was Miss Howard and that I worked there, and he said that he was—

Mr. Hyde: I am going to object to this as incompetent, irrelevant and immaterial and not binding on this defendant.

The Court: The objection will be sustained.

Q. (By Mr. Shelton) Since you have been here today have you had occasion to look at the defendant Harris here in this case and inspect him?

A. Yes, sir.

Q. Have you heard him talk?

A. Yes, sir.

Q. Have you been close to him, where you could look at him and have you looked at him quite extensively since your have been here this morning?

A. Yes, sir, I have.

Q. Tell the Court whether or not you can identify this man as being the man there in that office at that time.

Mr. Hyde: To which we object as incompetent, irrelevant and immaterial, upon the ground and for the
142 reason that it is undertaking to show a state of circumstances alleged to have occurred long before the offense for which the defendant is now being prosecuted by the Government in this case, and wholly unrelated.

The Court: I think your objection is good as to the merits of this case. I will not consider it for that purpose and I am doubtful whether I will be able to consider it on the motion, but I will let it in at this time and if I find it is not competent I will not consider it.

Mr. Shelton: It goes purely to whether or not our search was legal.

Mr. Hyde: Exception.

(Previous question read: "Tell the Court whether or not you can identify this man as being the man there in that office at that time.")

A. Yes, sir. He has on different clothes and no hat, but I feel sure—he seems to be the man that I saw there in the office. His clothes are different now. That is the only difference I can see from the man I saw in the office that afternoon.

Q. Have you any particular reasons you want to give for your identification of him?

A. Well, he is the same size, and his face and head, and I talked to him face to face for just a few minutes but then the other time I was looking at him from the back,
and his shoulders and the way he walks—that is
143 what I saw mostly, because I didn't talk with him but two or three minutes in the office, and he walked

away from me in the office and I could see the way he walked and studied that because I had never seen him before, and I was still wondering, definitely wondering what he was doing in the office.

Q. Then you base your identification upon the general appearance of his face?

A. Yes, sir.

Q. Upon his size?

A. Yes, sir, and he talked with me but not very plainly, but the tone of his voice, sounded like it did today.

Q. Is his voice and talk peculiar in any way to you?

A. Well, it is rather shrieky. I didn't know whether that was because he was ill at ease that day or not. I just didn't hardly believe he was in there to see—

Q. You heard him talk this morning?

A. What did you say?

Q. About whether there was some similarity between the talk you heard this morning.

A. Yes, sir, it was a tone or accent, the same way he spoke, which made it hard to understand this morning, and that afternoon in the office.

Q. Where did you hear him talk this morning?

A. Out in the hall.

144 Q. (By the Court) What kind of clothes did he have on then, do you recall?

A. Well, they were shabbier than the clothes the men wear you usually meet in the office. He was dressed very ordinarily but he wasn't very clean and neat or particularly attractive looking.

Q. In other words, he was not as well or expensively dressed as he is now?

A. No, not at all.

Q. Did he have his hat on?

A. Yes, sir, pulled down over his head but I saw his eyes and eyebrows.

Q. Pulled down in front?

A. Yes, sir, and rather a battered up hat.

Q. (By Mr. Shelton). State the conversation that took place there between you and the defendant.

A. Well, I asked him what he wanted or what he was

waiting on and why he was in the office, I forget which. I forget how he worded it—

Q. The substance of the conversation.

Mr. Hyde: May my objection be considered as going to all this testimony?

The Court: Yes, sir, to all this testimony. I don't know myself whether I am going to consider it at all.

A. He said he was waiting for Mr. Mudge; that
115 he was to meet Mr. Mudge there in a few minutes.
I asked him which Mr. Mudge and he said Mr. E. W. Mudge Jr. I rather doubted that because I had an idea Mr. Mudge had gone home to stay that afternoon, and I knew he had left for home the middle of the afternoon, about three or four o'clock anyway, so I stayed in the office awhile just to see if Mr. Mudge did come in, and as he did not, I locked my desk back up. I had opened it in the meantime just to kill time—I locked my desk and I locked the office and I went down the hall to another company's office and used the phone and called one of the men in our company who rides with Mr. Mudge every afternoon and I knew he would have an idea whether he was at home. He said he thought he was. I says, "There is a man up here in our office, I came back after I left at closing time, and he says he is waiting for Mr. Mudge," and I told him that I told him that Mr. Mudge had gone home, that I had asked the man in the office his name—

Q. Do you remember what name he gave?

A. He said Kief. I didn't understand it. He gave it to me twice. I thought if he was known to Mr. Newbury that he would know it.

Q. (By the Court) Do you recall what it was?

A. It was Kief, or something like that, so when I told that name to Mr. Newbury over the phone he thought I meant another name. He said, "Oh, yes," he knew him.
He thought he had come back there to see Mr. Mudge,
116 so I felt a little foolish then for disturbing Mr. Newbury and so I left.

Q. (By Mr. Shelton) Was the defendant still in the office when you left?

A. No, he left about the same time we did only he went down the stairs. I took the elevator.

Q. Who went out of the office first, you or him?

A. I did.

Q. And left the door open?

A. Yes, sir, he was in there.

Q. And he followed you out?

A. The lock was still on it. You see when I unlocked the door once I pushed the button back to keep it unlocked all day. It locks when you shut it, so when I shut the door with him in there it was locked, but I didn't go back —I left the office and went down the hall—

Q. How do you know he left?

A. I saw him. He left out of our office door and walked right by us where we were waiting for the elevator. We had signaled for the elevator and were waiting, and he took the stairway that is right by the elevator door and either went upstairs or downstairs.

Q. You saw him leave and go to the stairway?

A. Yes, sir.

Q. The office that you saw him in first when you entered the office, whose office was that?

147 A. Well, it is what we call our booking office. It is a general office. We all have our desks in our own offices. Then this room has adding machines and books, and a check cutter and our calculating machines and law books, and those things we use in a day's work and we carry them from that room to our desk.

Q. He was in the room where you kept your checks?

A. Yes, sir.

Q. Was the room where you saw him first Mr. Mudge's office?

A. No, sir.

Q. Was he at any time in Mr. Mudge's office that you knew about?

A. I didn't see him go in, no, sir.

Q. I show you a drawing and I ask you if that is a fair representation of the office, and if not, I will ask you to correct it and to designate thereon the different offices and who occupies them and so forth.

A. This has three offices instead of one.

Q. Just show that and mark each office. For instance, the bookkeeping office and where the checks are kept and Mr. Mudge's office and where you stay and where Mr. Newbury stays, and so forth.

A. Shall I just abbreviate the names?

Q. Just write out "Mudge, Jr." You don't need to put his initials in there. Now, I hand you what has been
148 identified as Government's Exhibit 27, and ask you if it is a reasonably fair representation of the floor plan of the Mudge Oil Company's office in Dallas, Texas, with designations as to what employee or officer occupies such room?

A. Yes, sir, that is right except the size of the offices. This is too large and this is too small.

Q. In other words, the drawing is a little out of proportion?

A. Yes, sir, but they are in the right place.

Mr. Hyde: We waive identification but object to its competency.

The Court: It will be admitted.

Q. (By Mr. Shelton) Mudge's office, then, was clear across the reception room from where you first discovered the defendant?

A. Yes, sir.

Q. What floor and in what building is this office?

A. It is on the 15th floor of the Gulf States Building. Our office number is 1500 and we have several offices, but that is our address.

Cross Examination.

Q. (By Mr. Hyde) You said you heard the defendant talk this morning?

A. Yes, sir.

149 Q. Out here in the hall?

A. Yes, sir.

Q. Did you talk to him face to face?

A. I didn't talk to him, no.

Q. Did he talk to you?

A. No, sir.

Q. You didn't talk to him?

A. I said no word to him.

Q. You heard him talk to third persons out here in the hall and from that it is your judgment, I believe you said a minute ago, that he talks like that man you saw in Dallas?

A. Yes, sir.

Q. You haven't seen the man you saw there in the office at Dallas until this morning, then? Is that right?

A. I saw this man and I had not seen him before until he was in the office.

Q. You stated when you talked with this party over the telephone you described the man and gave his name to the party you talked to over the telephone, and he said "Sure I know him and it is all right." Is that right?

A. Not exactly. I didn't describe him. I said there was a man that said his name was Kief or Keeye or something, and he misunderstood me and thought I said a name similar to that.

Q. He told you he knew the man and that it was all right?

150 A. He didn't say it was all right. He wondered why I went up in the office.

Q. You said you felt foolish about calling this man because he knew this man in the office?

A. Yes, sir. It was a name he thought I said.

Q. You say there was a girl with you there in the office?

A. Yes, sir.

Q. When you left to go down the hall to place this telephone call where was she?

A. She was with me.

Q. And this man who was there went out about the same time you did?

A. No. Immediately after I had called, made this call and was leaving the office I was calling from to go to the elevator and he came out of our office.

Q. What was distinguishable about the speech of this man you talked to there in the office of the Mudge Oil Company on March 6 that impressed you? You said you talked to him for a minute or two?

A. Well, it was his accent—I don't hardly know how to describe it. I don't believe he speaks with an accent. It isn't like I talk, though, or you talk.

Q. What was there distinguishable about it then? You say it was not the accent. What was the distinction?

151 A. I guess what I am thinking about is the accent, but I don't know whether that is exactly the word I want to use for it or not.

Q. You say he is about the same size and same shape of his head and different clothes?

A. Yes, sir. He is just better dressed today than at the time I saw him the other time.

Q. And you recognize him by his voice then. Is that right?

A. No, sir. His head. If he had a hat on I believe I would be definitely sure.

Q. You are not definitely sure unless he puts a hat on, are you?

A. The hat wouldn't make all the difference because I am fairly sure as it is because I saw the man and talked to him a few minutes and saw him walk across our office. I stayed in the office about five minutes. I went back and said something to him. I think I repeated what I said at one time, so I would have an opportunity to talk to him and maybe he would tell me who he was, something connected with the business or personally of Mr. Mudges so I would not have to call Mr. Newbury and ask him about it, because I didn't like leaving him in the office after office hours when he didn't have any business being there.

Q. You have never seen that man you say from that moment he left the office until today?

A. No, sir.

152 Q. And that was in March and this is the 18th day of December?

A. Yes, sir.

Q. What time of day was it, you say?

A. It was around 5:30 in the afternoon.

Q. What day of the week was that?

A. Monday.

Q. Who was the first one that you told about this being the man that you saw there?

A. Well, it was a month later.

Q. But you didn't see this man a month later, did you?

A. No, sir.

Q. As I understand you, it was on March 6 you saw him first, and that is the day out here in the hall before court convened you heard this defendant talking to some third person and that is the first time you have seen him since?

A. Oh, yes. I thought you meant discussed the man in our office.

Q. No, have you seen the man?

A. No, not to my knowledge I haven't.

(Witness excused.)

Mr. Hyde: I move at this time that the Court strike the testimony of this witness from the record on the same grounds and for the same reasons heretofore urged.

The Court: The motion will be denied.

153 Mr. Hyde: Exception.

Edith Brown King, was thereupon called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Shelton) State your name.

A. Edith Brown King.

Q. Where do you live?

A. 318 West Fifth Street, Dallas, Texas.

Q. How long have you lived in Dallas, approximately?

A. Since the early part of 1940.

Q. Are you employed?

A. Yes, I am.

Q. For whom do you work?

A. The Pennsylvania Railroad.

Q. How long have you been an employee of the *Pennsylvania* Railroad, approximately?

A. Since August 1, 1942.

Q. Are you acquainted with Miss Howard who just testified here?

A. Yes.

Q. How long have you known her?

A. I don't know exactly, about three years I would say, since I have been in Dallas.

A. Is the Pennsylvania Railroad office that you
154 work in in the same building in which the Mudge Oil Company office is in?

A. No, it is not.

Q. Are they nearby?

A. Yes.

Q. Do you recall an occasion when you met Miss Howard along in the month of March, 1944, when you went back to her office?

A. Yes, I do.

Q. Just tell the Court how that happened that you and her met on that occasion?

A. We arranged to meet after work, that is, after five o'clock for a cup of coffee. We sat and talked there, oh, I would say 30 minutes approximately.

Q. Where was that you sat and talked?

A. As I recall, it was in a shop adjacent to where she worked, the Gulf States Building.

Q. Take the story from there on and tell what happened.

A. We came out of the sandwich shop and were going to our respective homes, and she remembered she had left something in the office; I believe a magazine, and she was going back for it, and I said, "I will go along and use the phone," so we went up to her office, which is on the 15th floor—

Q. Of what building?

A. Of the Gulf States Building, down the hall, and
155 she unlocked the door, and as we entered we were aware as we entered the reception room that someone was in a private office to our right. We could see someone moving behind this frosted glass door and at about the same moment the door opened and this man came out.

Q. Just tell what happened after that.

A. The room had no lights. There were no lights at all in the office and Miss Howard turned on the lights in the reception room, and I walked around to the desk there in the reception room and sat down to use the phone there. She said something to this man, I don't recall the exact conversation, but something to the effect that we were—"Were you waiting for someone" or "Who are you", I

don't know what she said, and he gave her some sort of answer and she replied: "I am Miss Howard. I work here. Who are you?" He told her he was waiting for Mr. Mudge and she asked him which Mr. Mudge and he said, "Mr. E. W. Mudge, Jr." I was already at the phone then.

Q. The lights were on at this time, were they?

A. We turned the lights on, or Miss Howard switched the lights on. The offices were all dark when we came in.

Q. About how long a time did you have occasion to observe this man in the office there?

A. It was only a short time. I made the telephone call and she went into her office and out again. I should
156 say approximately ten minutes, maybe more or less. I don't know exactly.

Q. Did you apprehend at the time there was some concern about him being there? Did you gather that?

A. Yes. He was caught off guard and we were. We were not expecting to find anyone there.

Mr. Hyde: I object to the conclusion of the witness that he was caught off guard.

The Court: Yes, I will sustain the objection and will not consider that.

Q. (By Mr. Shelton) Just state what happened there, what he did or what you did.

A. He appeared ill at ease. He walked from the offices where he was when we came in through the reception room when I placed my phone call, he walked into another private office and picked up the phone and was on the same line on which I was talking. I was aware that there was someone on the line and I said, "Just a moment, there is someone on the line," or something to that effect, and Miss Howard was in her office, which was across the reception room opposite the office he was in. She called to him something about how to use the phone or how to pull the key out and he dialed but he didn't put in a call. He didn't turn the telephone dial and the call was not put in but before I finished my conversation he was back in the reception room.

Q. Since you have been here this morning have you
157 had occasion to look at the defendant Harris in this case?

A. Yes, I have.

Q. Tell the Court whether or not in your best judgment he is the man that was in the office that evening?

A. He is to my best judgment the person I saw that evening.

Q. Do you want to make any explanation as to why, in your best judgment this is the man?

A. He is about the same build, about the same age, as I recall, his gray hair, his dark clothing, and I think he had on glasses. In fact, I feel sure he was wearing glasses. He had on a hat at the time, and to my best judgment this is the man I saw.

Q. Have you any way of your own to definitely fix that date?

A. No, I haven't.

Q. You do know that it was in March?

A. I do know it was in March and I feel certain it was on Monday, the first part of the month—

Q. But you haven't any definite way of fixing it?

A. I think it was the sixth but I don't have any positive knowledge that it was.

Q. You had been to the Mudge Oil Company offices previous to that, had you not?

A. Yes, sir.

158 Q. The offices in which this man was, were the Mudge Oil Company's offices?

A. Yes, they were.

Q. And the offices in which Miss Howard is employed?

A. Yes.

Q. You had been there, I suppose, to visit her before?

A. Yes, I had.

Mr. Hyde: For the benefit of the record I would like to make the same objection I *hade* heretofore.

The Court: Yes, and it will be overruled and you will be allowed an exception.

Mr. Hyde: I didn't object to the introduction of the testimony because I understood the Court was taking into consideration my previous objection.

The Court: Yes, sir, I consider you objected to all this and will allow you an exception. I don't even know myself whether I will consider it.

Cross Examination.

Q. (By Mr. Hyde) The best recollection you have is that it was on Monday night and it was the 6th of March, now that you have talked it over with your young lady friend that works for this company?

A. To the best of my knowledge that is right.

Q. But you have no independent recollection that was the date?

159 A. No.

Q. But if she says it was March 6 then you know it was that day because there was only one time when this incident occurred?

A. That is right.

Q. You went back up to this office about 5:30 or 6:00 o'clock on that date?

A. Approximately 5:30 or 6:00.

Q. You walked into the office and you observed that there was some man in the adjoining office. You could tell that through the frosted glass?

A. That is right.

Q. The man came out and said something to Miss Howard. He didn't say anything to you. Is that right?

A. That is right.

Q. You said nothing to him all the time you were there?

A. No.

Q. And he said nothing to you?

A. That is right.

Q. She asked him his name and he gave some name, and what name was that?

A. I don't know. His speech was indistinct.

Q. And as I understand it, your object and purpose in going back up there was to use the telephone?

A. That is right.

160 Q. Of course, you immediately proceeded to use the telephone while she was talking with this man, didn't you?

A. Yes.

Q. Then he left and went in another room and your young lady friend also went in another room, didn't she?

A. Yes, sir.

Q. So that separated the three of you, being in three different rooms, didn't it?

A. All adjoining and all with the doors open.

Q. From the reception room you went to what room?

A. I was in the reception room. I didn't go out of the reception room.

Q. From the reception room each of these parties went to two separate rooms, whichever they were?

A. Yes, sir.

Q. Then finally he came back and then your friend left; and then didn't she go down the hall and use a telephone to call somebody about this strange man?

A. I went with her. We left together.

Q. She repeated the name again in your presence, didn't she, over the telephone, of this man to the party she had called over the telephone?

A. Yes, she did.

Q. What name did she repeat?

A. I don't know.

Q. But you understood from the conversation she had over the telephone with one of the officials or em-
161 ployees of the company, from your conversation with your girl friend, you understood that the man she had described and the name she had given was satisfactory to that man?

A. Yes.

Q. You remember that distinctly, do you not?

A. Yes.

Q. Whatever name the party was going under, after she made her investigation she found out that the party that was in the office was all right, whoever it was, you understood that, did you not, from her conversation?

A. Yes.

Q. If she says all told that she only talked to him a minute or two, would you say that was correct or incorrect. If she said she was only up there about five minutes, was that correct or incorrect?

A. I thought we were there longer. I was using the telephone.

Q. You said ten minutes, more or less. It could have been less, couldn't it?

A. It could have been.

Q. This man, whoever it was, had his hat on and you think he had glasses on?

A. I am sure he did.

Q. And he was about the same size as this de-
162 fendant?

A. Yes.

Q. About the same build, you say?

A. Yes.

Q. And his hair was gray?

A. Yes.

Q. Now, this morning out here in the hall you didn't talk to this defendant Harris, did you?

A. No.

Q. He didn't talk to you, or did he talk to your girl friend?

A. No, not this morning.

Q. You heard him talking to some fellows out in the hall, did you?

A. Yes.

Q. This is the first time you have seen this man, I believe, since the time he was in the office down there at Dallas, Texas, you say?

A. To the best of my knowledge it is, yes.

Q. And it is your judgment that this defendant here was in that office on March 6, 1944?

A. To the best of my knowledge, yes.

Q. Now, do you base that upon the fact that he is the same build as this man down there in that office?

A. That, together with his general appearance, his color and his speech.

163 Q. I understood you to say this man you saw in the office there was dark.

A. Dark skinned, yes.

Q. Come up here.

(Defendant approaches the witness stand.)

Q. Look at this man. Is this the man you saw in the office?

A. To the best of my judgment it is.

Q. Is his skin dark?
A. It is ruddy.

Redirect Examination.

Q. (By Mr. Shelton) Does he have any general features in particular that you identify him by?
A. You mean other than his size and coloring—the fact that he wears glasses, and it appears to be the same man. I don't know other than that.
Q. His speech that you spoke of, would you say he talks slow or rapid, or can you explain to the Court the kind of speech that he uses?
A. He mumbled, spoke in a very low voice. He mumbled, he was not distinct. I did not hear his name when he gave it. I could not say that he spoke slowly, more rapid, I guess.

Recross Examination.

164 Q. (By Mr. Hyde) You say he spoke rapidly or slow?
A. He didn't speak slowly when I heard him speak.
Q. But he spoke low?
A. Low.
Q. *Our* here in the hall this morning when you heard him talking was he talking loud?
A. No.
Q. Was he speaking lowly?
A. He was speaking in a normal tone of voice this morning out in the hall.
Q. Then the voice you heard this morning in the hallway here was not the same voice that you heard in the office, was it?
A. Yes, sir, it was.
Q. The same voice?
A. It appeared to be about the same voice to the best of my judgment.
Q. Did he talk in the same manner?
A. Well, the circumstances were a little bit different this morning.
Q. I asked you if he talked in the same manner he did down there?
A. Yes, sir.

Q. Low or loud?

A. In a normal tone of voice this morning.

165 Q. But down yonder it was in an abnormal tone?

A. Well, it was lower or softer.

Q. Did he have the same kind of clothes on?

A. He had on a business suit when I saw him before.

Q. Was he immaculately dressed?

A. No.

Q. Did he appear to be a business man?

A. I suppose so. He was not immaculately dressed. He might have been a bit on the shabby side.

Q. (By the Court) Do you feel he was this man, or is there considerable doubt in your mind?

A. Oh, there isn't a great deal of doubt. I feel sure, to the best of my knowledge, it is the same person.

Redirect Examination.

Q. (By Mr. Shelton) Would you say from hearing the man talk in Dallas and hearing him talk this morning that there was some similarity in the speech?

A. Yes.

Q. Would you say that the speech that you heard, this talk you heard from him, was a distinguishable type of voice and talk that would be easily remembered and recognized?

A. I think so.

Recross Examination.

166 Q. (By Mr. Hyde) What conversation occurred, please, ma'am; just detail what conversation occurred down in this office and then tell us the conversation you heard out here in the hallway.

A. Well, I told you as we entered the office—I don't know what was said other than the fact, each of us looked at the other in a questioning manner.

Q. I object to that if the Court please. I asked her what was said; not her conclusion.

A. I don't recall what was said.

Q. Do you recall anything this man said to either one of you?

A. He told us he was waiting for Mr. Mudge and Miss Howard asked which Mr. Mudge and he said "Mr. E. W. Mudge, Jr."

Q. What else?

A. He said Mr. Mudge had been there and would be back early; that he was waiting for him.

Q. What else?

A. I don't recall anything else he said. I put in my phone call and talked on the phone.

Q. Do you recall anything else now that this party who was in the office on March 6 said in your presence, any other statement at all that he made?

A. At this time I don't recall anything else.

167 Q. Now, out in the hallway this morning, what did this man say out there in your presence?

A. I don't know. I heard him talking but I did not make a note of it. He was talking with you and some other gentleman. I was merely a bystander.

Q. Walking around to observe whether or not it was the same voice. Is that right?

A. That is right.

Q. You walked around out there in the hall for quite a little while, didn't you?

A. Several minutes.

Q. You observed who was talking over there near the window, didn't you?

A. Yes.

Q. You observed us talking over here *hear* the door, didn't you?

A. Yes.

Q. And you were still wondering in your own mind as you walked around whether or not you had ever seen this man before in your life, weren't you?

A. No, I felt I had seen him. I wanted to be sure.

Q. Then you came up close to where he was, did you?

A. Yes, sir.

Q. What was he talking about?

A. I don't know. I was not thinking about what he was saying.

168 Q. You were looking him over?

A. That is right.

Q. You couldn't tell then from his color when you saw him near the window, or his size or his gray hair—he had his hat off out there, didn't he?

A. Yes.

Q. You couldn't tell from his size, from his glasses, from his appearance or the shape of his head or the coloring, or his hair, that this was the man. You had to hear him talk, didn't you?

A. It wasn't that. I was facing the door like. He was between me and the light and I walked around so the light would not shine in my face.

Q. Then you walked on this side and over there near the window, did you?

A. Yes.

Q. Where do you think you heard him talk, two different places or one place?

A. As I recall, I was standing near the window and he was there in the hallway in front of me.

Q. You were near the window yourself, weren't you?

A. Yes. I walked around and leaned on the window.

Q. The window was not between you and him, was it?

A. When I first saw him it was.

169 Q. And after you got over near the window and he was back over this way toward the door with the light shining in at the window, was there anything distinguishable about him that led you to believe then that this man was in that office on March 6?

A. Yes.

Q. But you had to come on around and get up close to him and hear him talk before you would say that, didn't you?

A. I wanted to be sure.

Redirect Examination

Q. (By Mr. Shelton) When you heard him talk this morning you were at all times within 10 or 15 feet of him, weren't you?

A. Yes.

Q. Could you hear the tone of his voice very distinctly?

A. Yes, sir.

Recross Examination.

Q. (By Mr. Hyde) How close did you get to him in this office in Dallas. Did you get within five feet of him?

A. Yes.

Q. That would be about like this, wouldn't it (illustrating)? Did you get this close to him?

A. Maybe not quite that close but we were in the same room.

170 Q. Did you get close enough to him down there? You say you were in 10 or 15 feet of him this morning.

A. I am sure I was close.

Q. And you were within five to ten feet of him this morning?

A. Yes, sir.

Q. Then if you were within five to ten feet of him this morning and within five to ten feet of him down there in Texas for 10 minutes—

A. It might not have been 10 minutes.

Q. Five minutes, then, would you need to hear his voice to determine whether or not that was the man?

A. His voice, because it is unusual, helps me in my own mind to prove to myself it was the same person, to the best of my judgment.

(Witness excused.)

Mr. Hyde: We make the same motion to strike all this from the record.

The Court: Motion denied and exception allowed.

PAULINE HOWARD was hereupon recalled, and testified as follows:

Redirect Examination.

Q. (By Mr. Shelton) You are the same Miss Pauline Howard who testified previously?

A. Yes, sir.

171 Q. There has been some misunderstanding here in the record about the name that you gave Mr. Newbury or what conversation you had with Mr. Newbury there in regard to who was in the office. Will you explain that to the Court, please?

Mr. Hyde: I submit there is not.

The Court: I think it is repetition. I will see what she has to say.

A. I think he said his name was Kief or Keeve. I asked him twice. It must have been a Jewish accent or something, so I had to ask him again what his name was, so I thought maybe I heard it good enough so when I repeated it to Mr. Newbury he would know, so when I said Kief or Keeve over the telephone Mr. Newbury thought I said another name.

Mr. Hyde: I am going to object to that because that is a conclusion.

The Court: Yes, sustained.

A. (By the witness) He thought I said Mr. Kent.

Mr. Hyde: I am going to object to the conclusion she makes as to what the gentleman on the other end of the line thought.

The Court: Yes, I doubt whether I should consider that.

Q. (By the Court) What was the other man's name?

A. Kent, but he didn't repeat the name Kent to me, Mr. Newbury didn't.

Q. (By the Court) You learned about that later?

A. Yes, sir.

172 Mr. Hyde: I renew my objection.

The Court: I think so. The objection will be sustained and that will be stricken.

Mr. Shelton: He was the one that brought out the thought and I wanted to explain it.

Q. (By Mr. Shelton) Did you testify whether or not the man had glasses on and if you did not, did he or not?

A. He did have. I don't remember whether I said it or not but the man I talked with had glasses on.

Q. (By the Court) Do you feel he was this man or is there considerable doubt in your mind?

A. No, sir. I have seen him walk around more this morning than I did in the office but I saw him from the back, and I heard him speak, and I was standing about as close to him as when he was speaking to me, and all he said to me was his name in a very muttering voice with his head down, and his hat pulled down, but I saw him

walk across the room, and he would jerk when he talked to me and he seemed ill at ease in the office which I felt he should because I didn't see that he had any business in there after office hours. I thought he was nervous or ill at ease or something because he paced around. He was jerky. He jerked his necktie and his clothes when
173 he talked to me. I was very ill at ease because I had a right to be there and I didn't think he did and I saw him walk across in the other office and there was three doors open.

Q. (By the Court) You understand your testimony might be very important to this defendant?

A. Yes, sir.

Q. Are you taking that into consideration?

A. I certainly am. I don't take it lightly at all.

Q. You understand what it might mean?

A. Yes, sir.

(Witness excused.)

Mr. Shelton: That is all.

Mr. Hyde: May I make my record?

The Court: The same objection and it will be overruled at this time.

Mr. Hyde: May I renew my demurrer in order to save time?

The Court: Yes, the demurrer is again interposed at this time. I am not satisfied yet as to the admissibility of these instruments and I am still considering it. I am not satisfied as to the law. As to the facts I am reasonably well satisfied so I think possibly I had better pass this so I will have sufficient time to go over those cases again. Do you have any objection?

174 Mr. Hyde: No. We rest.

(Thereupon, the trial of the above cause was concluded.)

Certificate.

175 I, B. R. Simpson, hereby certify that I am the regular designated court reporter for the United States District Court for the Western District of Oklahoma; that I reported in shorthand the proceedings had in the above and foregoing entitled cause; and that the foregoing pages are a true and complete transcript of my shorthand notes taken of said proceedings.

B. R. Simpson, Court Reporter,
United States District Court.

Stipulation of Correctness of Bill of Exceptions.

176 It is hereby stipulated and agreed by and between the parties that the foregoing bill of exceptions, together with the original exhibits heretofore ordered by the Court to be transmitted to the Circuit Court of Appeals with the record herein, is correct in every particular and that it may be duly signed, settled and allowed by the Honorable Stephen Chandler, Judge.

Dated this 28th day of March, 1945.

Charles E. Dierker, United States District Attorney,
By Robt. E. Shelton, Assistant U. S. District Attorney.
Herbert K. Hyde,
Lee Williams,
Attorneys for Defendant.

Endorsed: Filed in District Court on March 28, 1945.

Order Allowing Bill of Exceptions.

177 At Oklahoma City, Oklahoma, in said District, on this 28th day of March, 1945, the parties having stipulated that the foregoing bill of exceptions, together with the original exhibits, is correct in every particular, it is now

Ordered that the same be and is hereby settled, allowed, signed and authenticated, as in the proper form and as

conforming to the truth and is the true bill of exceptions herein, and is hereby made a part of the record in this case; and, it is

Further Ordered that the original exhibits introduced in evidence upon the motion to suppress evidence and upon the trial of this cause, now in the custody of the Clerk of this Court, shall be deemed to be included as a part of the foregoing bill of exceptions, with the same effect and in all respects as if incorporated in said bill of exceptions, and that said exhibits be transmitted with the record in this cause to the Clerk of the United States Circuit Court of Appeals for the Tenth Circuit.

STEPHEN S. CHANDLER, JR.,
United States District Judge.

Endorsed: Filed in District Court on March 28, 1945.

Clerk's Certificate to Transcript.

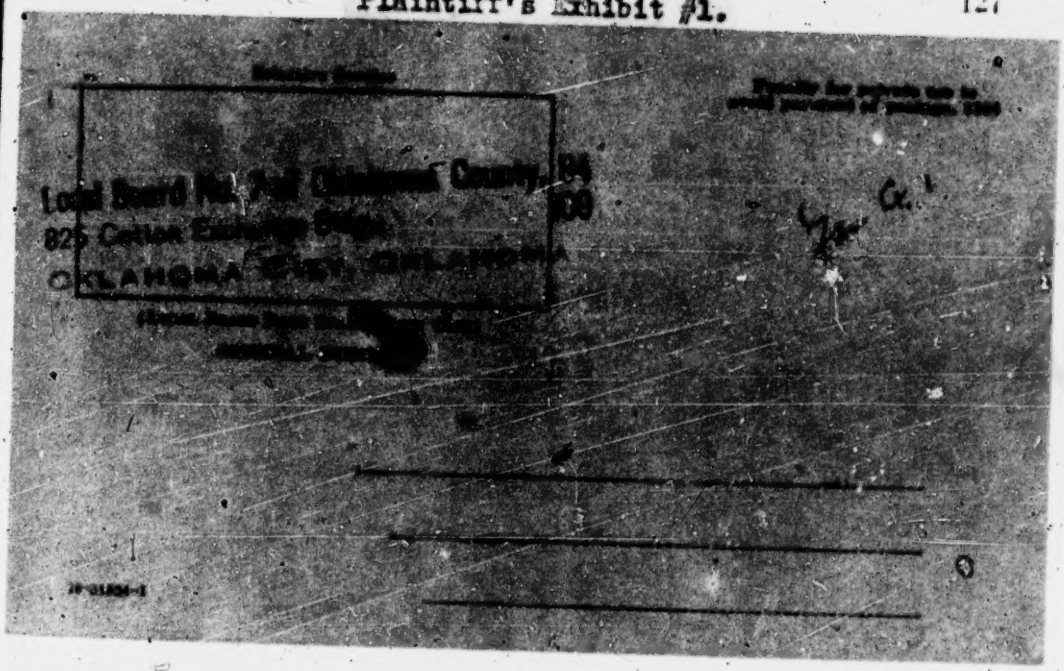
United States of America, Western District of Oklahoma, ss.

180 I, Theodore M. Filson, Clerk of the United States District Court for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in said court in Case No. 14695-Criminal, United States of America, Plaintiff vs. George Harris, Defendant, as full, true and complete as the said transcript purports to contain and as called for in the stipulation for transcript of the record above set forth.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Oklahoma City, in said District this 31st day of March, A. D. 1945.

THEODORE M. FILSON, Clerk,
(Seal) By MARGARET P. BLAIR, Deputy.

Filed April 3, 1945. Robert B. Cartwright, Clerk.


Local Board No. 2 of Oklahoma County, Okla.
825 Cotton Exchange Bldg.
OKLAHOMA CITY, OKLAHOMA

16-31824-1

NOTICE OF RIGHT TO APPEAL

Appeal from classification by local board or board of appeal must be made by signing appeal form on back of Selective Service questionnaire (Form 40) at office of local board, or by filing written notice of appeal, within 10 days after the mailing of this notice.

Before appeal, a registrant may file a written request for appearance within the same 10-day period; and if he does so, the local board will fix a day and notify him to appear personally before the local board. If this is done, the time to appeal is extended to 10 days from the date of mailing of the new Notice of Classification (Form 57) after such appearance.

There is a right in certain dependency cases of appeal from appeal board decision to the President; see Selective Service Regulations. For advice, see your Government appeal agent.

(Cut along this line)

NOTICE OF CLASSIFICATION

App. not Req.

(First name) (Middle name) (Last name)

Order No. ..... has been classified in Class .....

(Until ..... 19.....)
(Insert date for Class I-A and I-A-O only)

by ☐ Local Board.
☐ Board of Appeal (by vote of ..... to .....).
☐ President.

....., 19.....
(Date of mailing) (Member of local board)

The law requires you, subject to heavy penalty for violation, to have this notice, in addition to your Registration Certificate (Form 2), in your personal possession at all times—to exhibit it upon request to authorized officials—to surrender it, upon entering the armed forces, to your commanding officer.

DSS Form 57. (Rev. 11-16-42)

(Cut along this line to detach card)

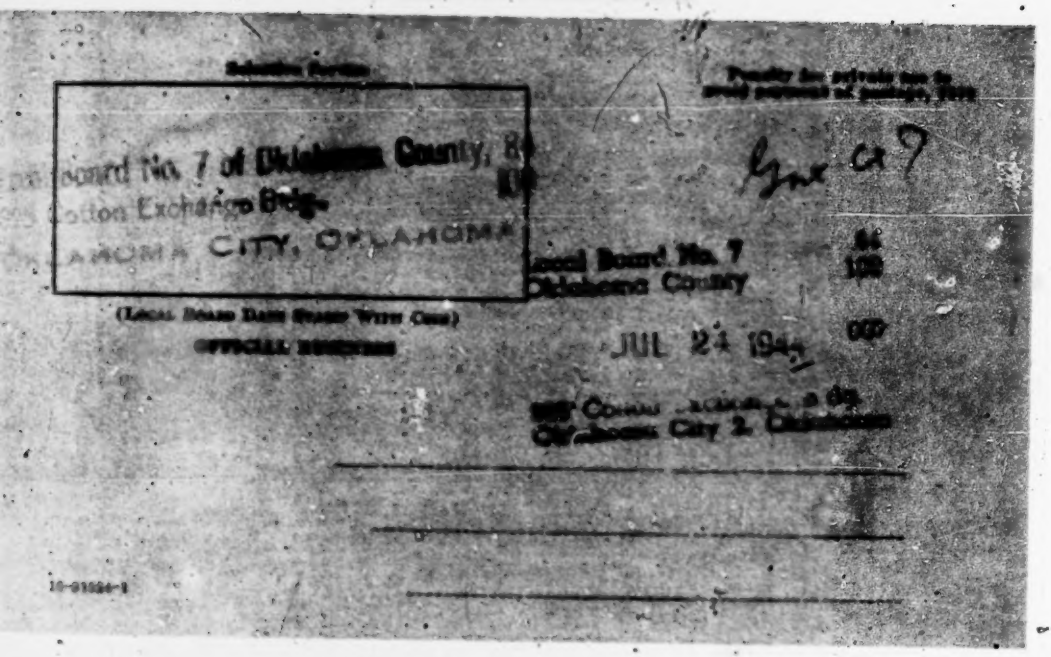
The law requires you—

1. **To keep in touch with your local board.**
2. **To notify it of any change of address.**
3. **To notify it of any fact which might change your classification.**
4. **To comply with the instructions on the notice of classification part of this form.**

GPO 16—31824-1

(Plaintiff's Exhibits 2 to 6, inclusive, are identical with plaintiff's Exhibit 1.)

Plaintiff's Exhibit #7.



(The other side of plaintiff's exhibit 7, "Notice of Classification", is identical with the "Notice of Classification" which appears as part of plaintiff's exhibit 1.)

Plaintiff's Exhibit #8

REGISTRATION CERTIFICATE

This is to certify that in accordance with the Selective Service Proclamation of the President of the United States

(First name) (Middle name) (Last name)

(Place of residence)

(This will be identical with line 2 of the Registration Card)

has been duly registered this ..... day of ....., 19....

(Signature of registrar)

Registrar for Local Board ..... (Number) (City or county) (State)

THE LAW REQUIRES YOU TO HAVE THIS CARD IN YOUR PERSONAL POSSESSION AT ALL TIMES

D. S. S. Form 2
(Revised 6/9/41)

16—21631

(Registrant must sign here)

DESCRIPTION OF REGISTRANT

Race		Height (Approx.)		Weight (Approx.)		Complexion	
		Eyes		Hair		Sallow	
White						Light	
		Blue		Blonde		Ruddy	
Negro		Gray		Red		Dark	
		Hazel		Brown		Freckled	
Oriental		Brown		Black		Light brown	
		Black		Gray		Dark brown	
Indian				Bald		Black	
Filipino							

Other obvious physical characteristics that will aid in identification .....

16—21631

(Government's exhibits 9 to 18, inclusive, are identical with plaintiff's exhibit 8.)

Gx 4/9

Plaintiff's Exhibit #19

incorrect

Local Board No. 7 of Oklahoma County, Okla.
825 Cotton Exchange Bldg. 109
OKLAHOMA CITY, OKLAHOMA

Local Board No. 7 of Oklahoma County, Okla.
825 Cotton Exchange Bldg. 109
OKLAHOMA CITY, OKLAHOMA

correct

Local Board No. 7 64
Oklahoma County 109
OCT 18 1944 007
825 Cotton Exchange Bldg.
Oklahoma City, Oklahoma

[Plaintiff's Exhibit 20.]

[Envelope.]

Murray F. Gibbons
Attorney and Counsellor
Midwest Building
Oklahoma City, Oklahoma

†*George Harris*
Personal Papers

**7/20/44 Taken from 2nd drawer of small bureau—bedroom at 2308 NW Ellison St Oklahoma City. James C. Ware, Special Agt. FBI*

[Plaintiff's Exhibit 21.]

[Small envelope with handwriting in pencil and in ink on face as follows:]

**5-9385*
Norma
†*Cards*
OKay

[Plaintiff's Exhibit 24.]

(Copy)

SF - 50
(Field Appointment)

Selective Service System

State Headquarters for Oklahoma

Notification of Personnel Action

Place: Oklahoma City, Okla.

Date: Sept. 25, 1944

Name Miss Virginia E. McCollum

Nature of Action: War Service Indefinite Appointment

Effective Date: September 21, 1944

†Appears in handwriting in ink on original.
*Appears in handwriting in pencil on original.

	From	To
Position		Clerical Assistant
Salary		$1440 per annum
Bureau or Other Unit		Local Board #7, Oklahoma County
Headquarters		
Departmental or Field	Field	Field

Remarks: Under this appointment you are subject to the provisions of the Civil Service Retirement Act.

Appointment under War Service Regulation V for duration of the war and not to exceed six months thereafter, unless sooner terminated, and subject to a trial period of one year.

The State Director has confirmed the foregoing action with respect to your employment in the Selective Service System. This action is subject to the provisions on the reverse hereof, when applicable.

Robert W. Johnson
(ROBERT W. JOHNSON, Major, F.D.,)
State Personnel Officer
Selective Service System

Employee Notification

[On reverse.]

Important

New appointees must execute Personnel Affidavit, take Oath of Office, and enter upon duty before any payment of salary can be made.

Employees are required to conform to all laws; and to be governed by all rules, regulations, and instructions now in force or hereafter promulgated by the Director of Selective Service or the Civil Service Commission.

The salaries of employees are subject to deduction as specified by law.

A War Service Appointment does not confer a Classified Civil Service Status.

Caution: This notification may not be used as the basis for the assertion of any authority or for the claim of any privilege as a representative of the Selective Service System.

(Copy)

SF - 50
(Field Appointment)

Selective Service System

State Headquarters for Oklahoma.

Notification of Personnel Action

Place: Oklahoma City, Okla.
Date: Sept. 25, 1944

Name: Miss Virginia E. McCollum

Nature of Action: War Service Indefinite Appointment

Effective Date: September 21, 1944

CSC Report Series: P

Civil Service or Other Legal Authority: 9th Reg. CMM Cert. WSF-231-CC(R) 9/16-44

Date of Birth: May 31, 1904

Date and Order No.: 9/25/44 44-42

Appropriation:

	From	To
Position		Clerical Assistant
Salary		$1440 per annum
Bureau or Other Unit		Local Board #7, Oklahoma County
Headquarters		
Departmental or Field	Field	Field

Remarks: Under this appointment you are subject to the provisions of the Civil Service Retirement Act.

Appointment under War Service Regulation V for duration of the war and not to exceed six months thereafter, unless sooner terminated, and subject to a trial period of one year.

The State Director has confirmed the foregoing action with respect to your employment in the Selective Service System. This action is subject to the provisions on the reverse hereof, when applicable.

ROBERT W. JOHNSON, Major, F.D.,
State Personnel Officer
Selective Service System

Personnel Folder (State Headquarters)

[Plaintiff's Exhibit 25.]

(Copy)

Selective Service System

Report of Personnel Action Taken by Local Board or Appeal Board With Respect to Compensated Employee

Local Board No. 7, Okla. County Oklahoma City, Oklahoma
(Name and number of board) (Location)

Sept. 21, 1944
(Date)

To: State Director of Selective Service for Oklahoma
(State)

The following personnel action has been taken with respect to the employee named:

Name of employee: McCollum, Virginia E., Miss
Date of birth: May 31, 1904
Nature of action: Indefinite War Service Appointment
Effective date: September 21, 1944

	From	To
Pay-roll designation		Clerical Assistant
Salary		$1440 per annum

Remarks: Indefinite War Service Appointment under Regulation V, for duration of the war and six months thereafter, unless soon terminated. (Original appointment)

I certify that the above-named employee is necessary for

the proper performance of the duties of this Board in the execution of the Selective Service Law; that the rate of compensation authorized is just and does not exceed that authorized by the State Director of Selective Service; that this employment does not violate the expressed Nepotism Policy of the Selective Service System; and that the employee has accepted the appointment indicated by properly executing Standard Form No. 61, Oath of Office, Affidavit, and Declaration of Appointee. (Note.—This certification does not apply when reporting separations.)

The following-listed forms indicated by cross mark (X) are attached:

[xx] Standard Form No. 57, Application for Federal Employment.
[xx] C. S. Form 2390, Fingerprint Chart.
[xx] C. S. Form 2413, Certificate of Medical Examination.
[xx] Standard Form No. 61, Oath of Office, Affidavit, and Declaration of Appointee.
[ ] Letter of Resignation.
[ ] Form W-4, Employee's Withholding Exemption Certificate, with name of spouse, if any, indicated thereon.

PAUL G. DAGGETT
(Signature of board chairman)

Original and two copies to be forwarded by the Board to the State Director.

Approved (copies returned to the above-named Board):

Robert W. Johnson
ROBERT W. JOHNSON, Major FD
State Personnel Officer
Selective Service System
(For the) State Director.

[Instructions re form omitted.]

[Plaintiff's Exhibit 26.]

(Copy)

Rent Receipt

June 25, 1944

Received of Virginia E. McCollum

Ten and no/100 ..... Dollars for

Rent of Room & Board No. .....

..... Month

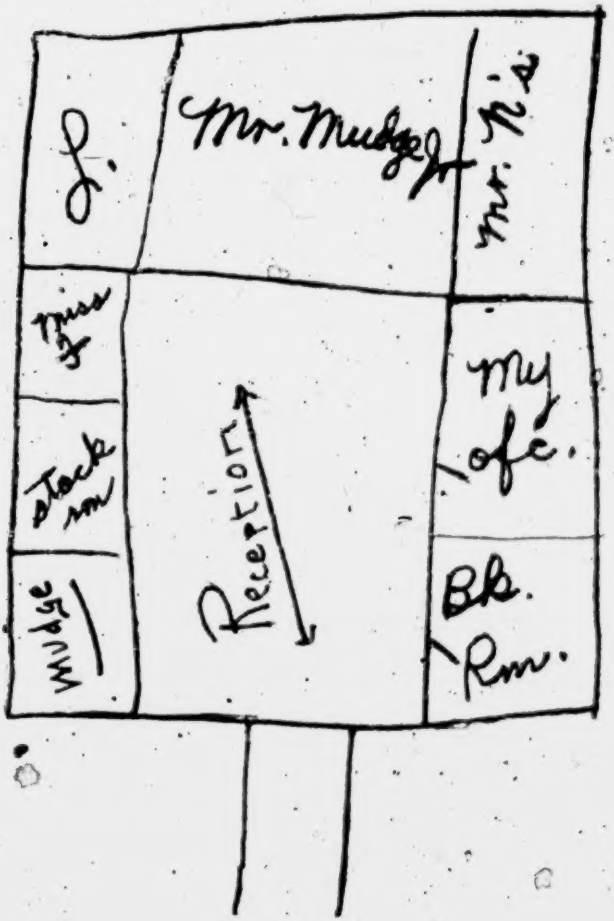
Ending July 2, 1944

$10.00

MRS. MCCAULY

Gn. # 27

Plaintiff's Exhibit #27



[Clerk's Certificate.]

In the United States District Court for the Western District of Oklahoma

I, Theodore M. Filson, Clerk of the United States District Court for the Western District of Oklahoma, do hereby certify the attached and foregoing are plaintiff's original exhibits numbers 1 to 27 inclusive, and an endorsed envelope containing un-numbered exhibits which were identified at the time of trial, as called for in the designation of portions of the record, and as included in the order of this Court directing the Clerk to transmit the original exhibits to the Circuit Court of Appeals for the Tenth Circuit, in Case Number 14695-Criminal, United States of America, Plaintiff vs. George Harris, Defendant.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Oklahoma City in said District this 31st day of March, A. D. 1945.

THEODORE M. FILSON, Clerk,
(Seal) By MARGARET P. BLAIR, Deputy.

Filed April 3, 1945. Robert B. Cartwright, Clerk.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit:

Order of Submission.

Thirty-second Day, May Term, Monday, July 9th, A. D. 1945. Before Honorable Alfred P. Murrah, Circuit Judge, and Honorable Eugene Rice and Honorable Royce H. Savage, District Judges.

This cause came on to be heard and was argued by counsel, Herbert K. Hyde, Esquire, appearing for appellant, Robert E. Shelton, Esquire, and Charles E. Dierker, Esquire, appearing for appellee.

Thereupon this cause was submitted to the court.

Opinion.

[October 26, 1945.]

Herbert K. Hyde (Lee Williams was with him on the brief) for Appellant.

Robert E. Shelton, Assistant United States Attorney (Charles E. Dierker, United States Attorney, was with him on the brief), for Appellee.

Before MURRAH, Circuit Judge, and RICE and SAVAGE, District Judges.

MURRAH, Circuit Judge, delivered the opinion of the court.

This appeal involves the reasonableness of a search and seizure, pursuant to which appellant was indicted, tried and convicted on evidence obtained by such challenged search and seizure.

In execution of two warrants for the arrest of appellant—one duly issued upon a criminal complaint alleging violation of the Mail Fraud Statute (18 U.S.C.A. 338), and the other for violation of the National Stolen Property Act (18 U.S.C.A. 413-419)—four or five special agents of the Federal Bureau of Investigation went to the apartment of appellant at 2308 North Ellison, Oklahoma City, Oklahoma, about 1:30 P. M. where they found appellant, and immedi-

ately placed him under arrest. In connection with the arrest, and for the declared purpose of "looking for two $10,000 cancelled checks of the Mudge Oil Company which our investigation established had been stolen from the offices of the Mudge Oil Company * *", and for "any means that might have been used to commit these two crimes, such as burglarly tools, pens or anything that could be used in a confidence game of this type", the agents proceeded to make a "thorough search" of appellant's apartment consisting of a living room, bedroom, kitchen and bathroom.

After searching for about five hours, one of the agents discovered a sealed envelope in a bureau drawer in the bedroom under some underclothes, upon which was written "George Harris, personal papers". This envelope was torn open and inside it was a smaller one which contained eight Notice of Classification cards, DSS Form 57 and eleven Registration Certificates DSS Form 2 stamped Local Board, No. 7, Oklahoma County, 84, 825 Cotton Exchange Building, Oklahoma City, Oklahoma. These cards and certificates had been originally delivered to this Draft Board by the United States Government to be used by such Board in the administration of the Selective Training and Service Act of 1940. The appellant was later charged by an indictment containing nineteen counts for offenses growing out of his unlawful possession of these cards and certificates. After timely motions to quash, suppress and dismiss, a jury having been waived, the case was tried to the court. The cards and certificates were offered and admitted in evidence over appellant's objection, and based upon this evidence the court found appellant guilty of various counts contained in the indictment, and imposed the concurrent sentences from which this appeal is taken.

Admittedly the officers had no search warrant describing the premises searched or the articles seized, and the only asserted authority for the search and seizure was as an incident to and contemporaneously with appellant's lawful arrest within the premises searched. On appeal, appellant contends that the search and seizure was constitutionally unreasonable and the court therefore erred in admitting the seized articles in evidence against him.

The rights of one to be secure in his person, papers and effects, against unreasonable search and seizure, and not to be compelled in a criminal case to be a witness against himself are fundamental rights under the 4th and 5th Amendments to the Constitution "which effect the very essence of constitutional liberty and security". Boyd v. United States, 116 U. S. 616; Weeks v. United States, 232 U. S. 383, 391. The true meaning of these rights are to be derived from what was deemed an unreasonable search and seizure at the time of the adoption of the Amendments to the Constitution,[1] and are to be construed in a manner which, will serve the public interest on the one hand, while protecting and safeguarding the personal rights of individuals on the other. Carrol v. United States, 267 U. S. 132, 149.

In constitutional language, a search and seizure without the authority of a search warrant issued upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person or things to be seized, is an unreasonable search and seizure and a conviction based upon evidence thus obtained cannot stand. Weeks v. United States, supra; Gouled v. United States, 225 U. S. 298.

We start then with the proposition that general exploratory searches for the purpose of uncovering evidence of crime, or for obtaining information, either with or without a search warrant is unreasonable and therefore within the constitutional ban. Boyd v. United States, supra; Silverthorne Lumber Co. v. United States, 251 U. S. 385; Gouled v. United States, supra; Amos v. United States, 255 U. S. 313. "It has always been assumed that one's house cannot lawfully be searched without a search warrant, except as an incident to a lawful arrest therein". Agnello v. United States, 269 U. S. 20, 32. See also Go Bart Importing Co. v. United States, 282 U. S. 344; United States v. Lefkowitz, 285 U. S. 452; Byars v. United States, 273 U. S. 28. It has, however, always been recognized under English and American law, before and after the 4th Amendment, that when a

[1] Willoughby on the Constitution, Sec. 720, p. 1172. Cooley Constitutional Limitations, 8th Ed. p. 612; Underhill's Criminal Evidence, 4th Ed., Sec. 395, p. 1441.

man is legally arrested for an offense, whatever is found upon his person or in his control which is unlawful for him to have and which may be used to prove the offense, may be seized and held as evidence in a prosecution against him.[2]

Thus in Marron v. United States, 275 U. S. 192, the court held that as an incident to a lawful arrest, for a crime committed in their presence, the officers were authorized without a search warrant to contemporaneously search the place where the crime was being committed in order to find and seize the things used to carry on the criminal enterprise; that such authority extended to all parts of the premises used for the unlawful purpose, and included those things so closely related to the criminal enterprise as to be necessary for its maintenance. See also United States v. Lindenfeld, 142 F. 2d 829 and United States v. Jack Davis, ——F. 2d ——; Matthews v. Correa, 135 F. 2d 534; United States v. Poller, 43 F 2d 911. And, in the Agnello case, supra, the court, while sustaining the search of the place where the arrest was made, as reasonable incident thereto, held that the right did not extend to other places and that the search of Agnello's house several blocks distance from where he was arrested could not be sustained as reasonable incident to his arrest. By the same rationale, it has been held that a "clean sweep of all the papers and documents found" on the premises where the arrest was made was not reasonably incident to the lawful arrest, as all general exploratory searches in the hope that evidence of crime might be found. Silverthorne Lumber Company v. United States, 251 U. S. 385; Go-Bart Importing Co. v. United States, 282 U. S. 344; United States v. Lefkowitz, 285 U. S. 452.

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[2]Carrol v. United States, 267 U.S. 132; Boyd v. United States, 116 U.S. 616; Weeks v. United States, 232 U.S. 383; Aguello v. United States, 269 U.S. 20; Marron v. United States, 275 U.S. 192; United States v. Jack Davis, decided August 8, 1945, —— F. 2d ——; United States v. Lindenfeld, 142 F. 2d 829; Matthews v. Correa, 135 F. 2d 534; United States v. Tot, 131 F. 2d 261; United States v. Poller, 43 F. 2d 911; United States v. Welsh, 247 F. 299; Welsh v. United States, 267 F. 819; Colyer v. Skeffington, 265 F. 17; United States v. Murphy, 264 F. 842; Flagg v. United States, 233 F. 481; United States v. Hart, 241 F. 655; United States v. Mills, 185 F. 318; United States v. Wilson, 163 F. 338, appeal dismissed 220 U.S. 549. See also Concerning Searches and Seizures, 34 Harvard Law Review, 361; Underhill's Criminal Evidence, Sec. 799, 4th Ed., p. 1455; and 47 Amer. Juris. Search and Seizure, Sec. 19. See also Annotation 82 A.L.R. 782.

It is significant that all cases which deal with the authority to search and seize incident to a lawful arrest make a clear distinction between general and exploratory searches made solely to find evidence of guilt and those searches to find and seize the instrumentalities or the fruits of the crime for which the arrest is made. See also, Boyd v. United States, 116 U. S. 616; Weeks v. United States, 232 U. S. 383; Carroll v. United States, 267 U. S. 132; Gouled v. United States, 255 U. S. 298; Agnello v. United States, supra.

"The line between the fruits of the crime itself and mere evidence thereof may be narrow" and perhaps turn more on the good faith of the search than the actual distinction between "fruits" and "evidence". Matthews v. Correa, supra. It cannot be doubted that a search for the fruits or the means of a crime, either under authority of a valid search warrant or as an incident to a lawful arrest, may exceed the bounds of constitutional reasonableness, and our province is to determine whether the officers have exceeded the legitimate prerogatives conferred by the warrant regardless of the object of their quest. See Matthews v. Correa, supra; United States v. Lindenfeld, supra; In re Ginsberg, 147 F. 2d 729. The query in either case is whether the search has exceeded the bounds of reasonableness.

Appellant bases his contentions of unreasonableness on the thesis that the search was general, exploratory and evidentiary, but the record does not support this contention. The officers did not enter to explore to see what they could find. They entered to execute a valid warrant of arrest. The incidental and contemporaneous search was thorough—it was as thorough as its nature required, but the reasonableness of a search is not necessarily to be judged by its thoroughness, so long as it has a reasonable relationship to its object. Appellant was arrested for offenses involving the forgery of a $25,000 check drawn on the Mudge Oil Company and signed by designated officers, and the testimony in this case is to the effect that the officers were looking for two $10,000 cancelled checks which had been stolen from the offices of the Mudge Oil Company, and which the officers had good reason to believe had been used as a part of the

means for forging the $25,000 check. The avowed purpose of the search was for the means by which the crime was committed and it extended no further and was no more extensive than necessary to uncover the articles sought. It is not likely that the checks would be visibly accessible. By their very nature they would have been kept in some secluded spot, and it is not unlikely or unreasonable to assume that they would be found encased in an envelope where the draft cards and certificates were in fact discovered.

To be sure, the authority to search for the fruits or the means of the offense as an incident to the lawful arrest, like all prerogatives based on reason, is susceptible to oppressive abuse. The authority must be confined to narrow limits and utmost good faith exacted. Courts must exercise care lest we unwittingly sanction an evidential exploration under the guise of a declared legitimate purpose. The restraint can best be imposed by an inquiry into the bona fides of the declared purposes of the search and the trial court is the first and best judge of whether the challenged search was reasonably incident to its permissible purposes.

When the search was challenged in this case, the trial court conducted an extensive inquiry concerning its purposes and scope, and based upon all of the evidence concluded that the search and seizure was not unreasonable. While it is also our duty to exercise circumspection for the constitutional rights of the one accused of crime, we must accord to the trial court the primary responsibility of balancing orderly and efficient enforcement of the criminal laws against the constitutional rights of those charged with crime. When judged by these standards, we are unable to say that the search for the fruits and means of the crime charged as an incident to the lawful arrest therefor was unreasonable under the attendant circumstances.

But, conceding the authority of the officers to search as they did for the instruments or fruits of the crime for which appellant was arrested, the further question is posed whether the officers were authorized to seize the instruments of a crime for which appellant was not arrested and which were wholly unrelated to the crime charged. In other words, conceding the validity of the search, was the seizure never-

theless bad. If the officers had been in under a search warrant sufficiently describing the premises to be searched but which did not describe or particularize the articles seized, the seizure would be unauthorized and the seized articles would be inadmissible, for the requirement that a search warrant particularly describe the things to be seized, "prevents the seizure of one thing under a warrant describing another". Marron v. United States, 275 U. S. 192.

It is said that the authority to search one's house or place of business contemporaneously with his lawful arrest therein upon a valid warrant is no greater than that conferred by a search warrant issued upon adequate proof sufficiently describing the premises and the things sought to be seized. United States v. Lefkowitz, supra; Papani v. United States, 84 F. 2d 160; United States v. Thomson, 113 F. 2d 643; United States v. Kirschenblatt, 16 F. 2d 202. "Indeed, * * security against unlawful searches is more likely to be attained by resort to search warrants than by reliance upon the caution and sagacity of petty officers while acting under the excitement that attends the capture of persons accused of crime". United States v. Lefkowitz, supra. From this premise it may be argued that seizures incidental to lawful arrest should be limited to the instrumentalities and fruits of the crime for which the arrest is made. But, we must not permit the technical rules of logic so blindly lead us to an absurd result. "We are not to strain an immunity to a point at which human nature rebels against honoring it in human conduct". (Judge Cardozo in People v. Chaigles, 237 N.Y. 193, 142 N.E. 583, 32 A. L. R. 676.)

It is important to consider that the function of a search warrant is to authorize the search of one's home before any arrest is made and it is therefore prudent to confine the seizure to the things specified therein—such is the constitutional command, while a search as an incident to a lawful arrest is for the purpose of seizing the fruits or the means of committing the crime, and by its nature necessarily cannot be particularized. To illustrate, in the Marron case, supra, the seizure was unauthorized by the search warrant under which the officers legally entered, but it was sustained as an incident to the lawful arrest.

While a search in violation of the constitution is not made lawful by what it brings to light, Byars v. United States, 273 U. S. 28, 29, neither is a search which is valid in its inception made unlawful merely because it uncovers evidence of a crime not contemplated by such search. Gouled v. United States, 255 U. S. 298, 311, 312; Matthews v. Correa, supra; Shelton v. United States, 50 F. 2d 405; United States v. Kirschenblatt, supra; United States v. Charles, 8 F. 2d 302; Milan v. United States, 296 F. 629. "The important thing is that the search which turns up the offense must itself have been legal", Matthews v. Correa, supra. The articles involved here were uncovered in the course of a lawful search and they were themselves "the means of committing" a crime against the United States.

It would indeed be a flouting of the law to hold that officers while legally searching as an incident to a lawful arrest could not seize the instruments or the means of committing another and wholly unrelated offense unexpectedly uncovered by such search, simply because they did not enter for that purpose. In our judgment, the immunity does not extend that far.

The judgment is affirmed.

Judgment.

Twenty-fourth Day, September Term, Friday, October 26th, A. D. 1945. Before Honorable Alfred P. Murrah, Circuit Judge, and Honorable Eugene Rice and Honorable Royce H. Savage, District Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that George Harris, appellant, surrender himself to the custody of the United States Marshal for the Western District of Oklahoma, in

execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

Petition for Rehearing.

Appellant, George Harris, respectfully prays the Court to grant a rehearing herein, for the reasons hereinafter set forth.

In its opinion herein, the Court cites with approval the Boyd, Weeks, Silverthorne, Gouled, Amos, Go-Bart, Byars, Marron, and Lefkowitz Cases decided by the Supreme Court, and states some of the basic principles announced by those cases.

But we submit that the Court has not followed those principles when, as we understand the opinion of the Court, the Court seems to hold, first, that this search was "reasonable."

The Court announces the reason for holding that it was reasonable to be because,

"... The officers did not enter to explore—to see what they could find. They entered to execute a valid warrant of arrest."

and, having entered for *that* purpose, that they had a right to make a thorough search of the premises, even to the extent of ransacking four separate rooms; and, accordingly, the Court holds that the search was "reasonable" because it was "in good faith."

Yet, if the arrest of the appellant Harris was the avowed object, purpose and intent of the officers in entering his home, and none other, then they had completed their mission when they seized the person and the body of the defendant and had him handcuffed.

Did these officers stop at that? No. They say, in effect, "Now that we have the defendant Harris in our custody legally, we intend to make a thorough search of his home for a definite and specific purpose—"looking for two $10,000 cancelled checks of the Mudge Oil Company which our

investigation established had been stolen from the offices of the Mudge Oil Company."

If this be so, and if they were "in good faith", why did not these same officers go before a magistrate, a United States Commissioner or a Federal Judge, and make an affidavit and lay before him the evidence that they claimed to possess, and, based upon that, have issued to them a search warrant covering the identical things for which they were looking?

We judge the good faith of men by their actions and their conduct. This Court says they were in good faith. If they were in good faith, we ask this Court why it is that no indictment has ever been returned against the accused for the alleged violation of law for which he was "legally" arrested? This Court can and will take into consideration, as a matter of judicial knowledge, all of the Court filings in every judicial district in this Tenth Circuit. And in determining the "good faith" of officers in making the arrest in the first instance, this Court ought to inquire why it is that the Government has never indicted this man upon the evidence they claim to have had in their possession at the time he was arrested?

Since no indictment, trial or conviction has been had upon that alleged offense for which he was arrested, then is it unreasonable for us to ask the Court to consider the thorough search which was made as a basis for our argument on the proposition that at the time of the arrest for the alleged crime, the officers were searching in every nook and corner, making "a general and exploratory search", with the hope and purpose in mind that they *might* be able to find something in connection with an alleged violation of law, if not this crime, then some other crime, anything, in order to bring this defendant to justice?

If the avowed object and purpose of the officers was merely to execute a valid warrant of arrest, then we ask the Court why the officers detailed a special squad to guard the defendant while two of them left in the middle of the afternoon and went back to the office of the United States Commissioner and there procured a search warrant to

search his automobile, after they had completely ransacked his home?

Again, if they were "in good faith," we ask the Court why, in obtaining a search warrant for appellant's automobile in order to search it for the same things they were searching his home for, their affidavit for such search warrant merely stated that they had "good cause to believe, and do believe" that George Harris had these things in his possession at that place, without telling the Commissioner anything at all upon which they based that belief? Why did they not say to that Commissioner, as they now say to this Court, "Our investigation establishes two $10,000 cancelled checks have been stolen from the offices of the Mudge Oil Company"? And why did they not tell that Commissioner what *facts* they had upon which to base their "belief" that George Harris had those checks either at his home or in his automobile? Did they have any *facts?* Were they "in good faith", or were they merely on a "fishing expedition"?

The answer to all these questions must be, to any reasonable mind, that their object and purpose was to further their search for "evidence" of some violation of some law.

And we say that all of the actions and conduct and demeanor of the officers is the very antithesis of good faith, and wholly contrary to the purpose and intent of the Fourth Amendment, and a clear invasion of his rights as a citizen in violation of the Fourth and Fifth Amendments.

But, counsel for appellant do not concede that good-faith on the part of the officers is a proper criterion for this Court, for the reason that, as our Courts have said, time and time again, you cannot substitute the socalled good faith of an officer for the necessary deliberate determination of magistrates empowered to issue warrants as to the extent to which he shall go in making a search. Lefkowitz Case).

This Court announces the rule that incident to a valid arrest the officers may make a search as thorough as its nature required; that the reasonableness thereof is not

necessarily to be judged by its thoroughness, so long as it has a reasonable relationship to its object.

Bearing in mind, now, that the object and purpose of the officers is to arrest the person of the defendant, and that no search was contemplated, because no search warrant was obtained to search the home, we therefore are reduced to the position of determining whether or not we are going to make the extent of the search dependent, not upon the arrest, but upon the object of the search, namely, in looking for evidence.

"The authority of officers to search one's house or place of business contemporaneously with his lawful arrest therein upon a valid warrant of arrest *certainly is not greater* than that conferred by a search warrant *issued upon adequate proof.*" (Lefkowitz Case).

If the officers say, as they do, that they were looking for two $10,000 cancelled checks which had been stolen from the Mudge Oil Company and which they believed had been used as the basis for forging the $25,000 check, then they knew, or should have known, the numbers on those checks, the dates on which they were issued and cashed, the bank on which they were drawn, the date on which they were issued, and the names of the payees of those checks. And if, in addition to this information they actually did "have good cause to believe" that George Harris had those checks, they might very well, based upon the evidence they had in their possession, have made an affidavit in which they would reveal that information to the magistrate and upon his judicial determination that their information was sufficient to justify their "belief", i.e., that they were "in good faith," and thus secured a search warrant which would have given them the right to make a search as thorough as its nature required, and then this Court might well have said that the search was reasonable for the obvious reason that it had a reasonable relationship to its subject. But they have *not even yet* given that information upon which they claim to have based their belief, their "good faith", either to any magistrate, or to this Court.

And for this Court to attempt to draw a fine line of distinction between the object of a search incident to a lawful

arrest without a search warrant, and a search made under a search warrant, by announcing that regardless of how thorough the search may be, so long as it relates to the things for which the officers were searching, destroys the very foundation upon which this Amendment was built, and is in direct violation of the plain injunction of the Supreme Court of the United States in every decision since the days of John Marshall.

The Court announces in its opinion,

"that, when a man is legally arrested for an offense, whatever is found upon his person, *or in his control* which is unlawful for him to have, and which may be used to prove *the offense*, may be seized and held as evidence in a prosecution against him."

An examination of the cases cited in support of this proposition does not seem to support the conclusion reached thereunder in this case when applied to the facts.

It is true that this statement just above quoted is made in the same language in the Carroll case; but there the Court did not have under consideration a case in which it was claimed there had first been a legal arrest, and therefore the Court unfortunately omitted to include the word "immediate" in the phrase "in his control" in its statement of the principle.

We think the Court is not justified in using the Carroll case as authority for the search in this case; for the Court very emphatically calls attention in that case to the fact that a very different rule must necessarily apply in the case of a moving vehicle which can be quickly removed before a search warrant could be procured, and the case of a search of a store, dwelling house or other structure.

This Court, in its opinion in Pearson v. U.S., No. 3122, decided June 21, 1945, concurred in by the writer of the opinion in the present case, this Court cited and quoted from the Carroll case and also from Director General v. Kastenbaum, 263 U.S. 25, 68 L. ed. 146, 44 Sup. Ct. 52, on the question of "probable cause" or "good faith:"

"But, as we have seen, *good faith is not enough* to con-

stitute probable cause. That faith must be grounded *on facts* within knowledge of the Director General's agent, which, in the *judgment of the court*, would make his faith reasonable."

Further, in the Kastenbaum case, it is said:

"The burden is on the defendant (Government) to establish probable cause for the arrest (search). The want of probable cause, certainly *in the absence of proof of guilt or conviction* of the plaintiff (defendant), is measured by the state of the defendant's (officer's) *knowledge, not by his intent*. It means the absence of probable cause known to the defendant (officer) when he instituted the suit (search). But the standard applied to defendant's (the officer's) consciousness is external to it. The question is not whether *he* thought the facts to constitute probable cause, but *whether the court thinks they did*."

Can this Court say *that this Court thinks*, from the *facts* and *knowledge* then possessed by these officers and which has now been revealed to this Court, constituted probable cause—that they were in good faith? What were and are those facts and that information? They say to this Court: "Our investigation established two $10,000 cancelled checks had been stolen from the offices of the Madge Oil Company." "That is what *we* thought." "Therefore, without more, we made this search in good faith." Have they *proven to this Court* that there were ever at any time *any* checks stolen from the Mudge Oil Company? No. Have they said to this Court anything whatsoever as to why, if they did, *they* believed George Harris ever had any such checks? No. They have shown *nothing* to this Court to justify probable cause, belief, or good faith.

As authority for the statement in the Carroll case which is embodied in the opinion in this case, the Court cites the Weeks case, as does this Court; but the Weeks case does not go so far, but merely recognizes the right "to search *the person* of the accused when legally arrested," and refuses to sanction the search of one place under a lawful arrest at another. This is likewise true of the Agnello case, cited.

The Marron case can furnish no justification for the search

here made. For, as is suggested in the Go-Bart case, in commenting on the Marron case, these officers in searching the home of George Harris did not "see conspiracy being committed;" George Harris was not "committing crime in their presence when arrested;" but, contrary to the situation in the Marron case in which the "things were *visible* and accessible and in the offender's *immediate* custody," the things here were discovered only by a "general search and rummaging" of Harris' home.

In the Lindenfeld case (CCA 2) 142 F.2d.829, the things seized were cards containing patient's records, within reach of his desk, upon the lawful arrest of a physician in his office for violation of the narcotic laws; and the Court there comments on the fact that "there was no exhaustive and minute combing of the premises as in the Go-Bart and Lefkowitz cases," but, being within easy reach of his desk in his office where he conducted his unlawful enterprise, they were in his "*immediate* possession and control."

In Matthews v. Correa, 135 F.2d.534, upon petitioner being arrested in her home for concealing property from her trustee in bankruptcy, a search was made and certain articles were found and seized, which the Court says were "the very things withheld." The Court calls attention to the fact that in U.S. v. Poller, 2d.Cr., 43 F.2d.911 (which this Court also cites), it was suggested that under the then decisions the limitations were only "upon the fruits to be gathered" and that these would "tend to limit the quest itself." This is apparently about the same thing this Court is now suggesting. However, in the cited case, the Court says that,

"Possibly, however, the law now goes further and *limits the manner of search*. At any rate, the Lefkowitz and Go-Bart cases emphasized that in the Marron case the articles seized were *visible* and accessible and in the offender's *immediate* custody."

In U.S. v. Tot (CCA 2) 131 F.2d.261, the thing taken upon an arrest of defendant was a *gun*. Not only did Tot tell the officers that he had a gun, but told them where it was, and its taking was "practically a contemporaneous transaction" with the arrest. And it was held properly seized only by

reason of the fact that it came within the well-established exception of being "a weapon which might be used to effect an escape."

The Poller case, supra, not only does not support the decision herein, but holds that the things which may be seized upon a lawful arrest is,

"limited to those used to commit or carry on the offense for which the arrest is made."

The decision in U.S. v. Welsh (DC NY) 247 F.239, plainly cannot stand, in view of the Byars case. For Welsh was arrested without a warrant, and there is no justification shown for the arrest in the first instance; and when the Court says that,

"anyone could arrest the person carrying it, who was thus committing a felony *in his presence*. To be sure, the man making the arrest *would not know that a felony was being committed*. - - - But in this case it appears - - that the *suspicions were well founded*."

it, in effect, says that,

"a search prosecuted in violation of the Constitution *is* made lawful by what it brings to light."

And this the Byars case says cannot be true.

The same applies to the case of Welsh v. U.S. (CCA 2) 267 F.819, involving the same arrest and search.

Neither does the case of Colyer v. Skeffington (DC Mass) 265 F.17, support the decision here. In that case the Court, in a habeas corpus hearing for 20 aliens held for deportation as being members of the Communist Party, approves the principles of the Weeks and Silverthorne cases, and comments on the fact that "there were probably no search warrants and that none could have been legally issued."

In U.S. v. Murphy (DC NY) 264 F.842, Murphy was arrested for being drunk, and whiskey was seized "from his person". The case can have no application here.

In Flagg v. U.S., 233 F.481, cited in the Colyer case, supra, and cited by this Court, defendant was arrested without a

warrant, and without a search warrant certain books were seized and made the basis for his later arrest by Federal officers and his conviction for using the mails to defraud. The case was reversed because of the *unlawful* seizure.

In U. S. v. Hart, 214 F.655, the things involved were *voluntarily* delivered by Hart to the U. S. Attorney, and the Court says that, "on the statement of Hart himself, there has been no search and no seizure."

In U.S. v. Mills (DC NY) 185 F.318, the seizure of documents concerning another similar offense to that on which defendant was lawfully arrested, was held improper.

The decision in U.S. v. Wilson (DC NY) 163 F. 338, which involved things taken from a trunk afterwards opened with a key taken *from the person* of defendant when arrested turns upon the meaning of the terms "compulsory discovery" and "seizure", which the Court holds to

"refer to more than the exercise of compulsion upon the defendant himself, either during the trial, or while he is under arrest, to compel him to produce, or to furnish information as to, property and papers which are wanted as evidence."

In refusing to return the seized items before the trial, the Court reserved to the defendant the right to object to their introduction in evidence at the trial on Constitutional grounds.

This Court says in its opinion, on page 4, that,

"In constitutional language, a search and seizure without the authority of a search warrant issued upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person or things to be seized, is an unreasonable search and seizure, and a conviction based upon evidence thus obtained cannot stand.",

citing the Weeks and Gouled cases. We thoroughly agree with this pronouncement. Yet we ask, how can the Court reconcile with the foregoing principle its conclusion that the seizure here involved was "reasonable", in view of the Lefkowitz case which says that "authority to search contem-

poraneously with a lawful arrest certainly is not greater than that conferred by a search warrant."

Again, this Court says, (opinion, p.11)

"It is important to consider that the function of a search warrant is to authorize the search of one's home *before any arrest* is made and it is therefore *prudent to confine the seizure to the things specified therein*—such is the constitutional command, while a search as an incident to a lawful arrest is for the purpose of seizing the fruits or the means of committing the crime, and *by its nature necessarily cannot be particularized.*"

Why, we ask, would it be an easier, or any more prudent, before an arrest, to particularize the things to be searched for, than it would after the matter had progressed to an extent that a lawful warrant of arrest could be procured? Would the officers desiring to search likely know more as to the items and their location before the matter had reached the stage where they would be justified in seeking a warrant of arrest, than they would after it reached that stage?

This Court reaches the further conclusion that, conceding the lawfulness of the search, the seizure of and prosecution based upon other items not connected with the crime for which defendant was arrested, is good. In support of this conclusion the Gouled and Matthews cases, supra, and the Shelton, Kirschenblatt, Charles and Milam cases, infra.

As to the Gouled case, it should be borne in mind that the articles seized were the *same* items described in the search warrant, and were "particularly described" in it.

We have discussed the Matthews case, supra.

In Shelton v. U.S. (CCA 7), 50 F.2d.405, defendant was arrested upon information which was held sufficient to justify his arrest without a warrant, that information being, in effect, that he was a busy bootlegger, and that he was about to convey a load of liquor to his home; upon his arrest, no liquor was found on his person, nor in his car, but some was found and seized from his garage. The liquor was in his *immediate* control, within easy reach, and certainly it related to the very object of the arrest.

The Kirschenblatt case (CCA 2) 16 F.2d.202, was noted in our original brief, and holds the very reverse of the holding of this Court on this proposition.

In the Charles case (DC Cal.) 8 F.2d.302, defendant was lawfully arrested for violation of narcotic laws; upon a search some liquor was found, some of which was "in plain view." The Court attempts, unsuccessfully, to distinguish U.S. v. Boyd (DC Wash.) 1 F.2d. 1019, which holds exactly the opposite, saying,

"It may be conceded that a narcotic or other Federal officer, who on reasonable grounds institutes a search for drugs, may not take advantage of his presence on the entered premises to make a search for liquor. To hold otherwise would in effect be to qualify section 25 of title 2 of the National Prohibition Act by evasion, and to encourage unconstitutional subterfuge."

and the Court comments that "there is very little authority for or against this proposition", and cites in support of it only one, Milan v. U.S. (CCA 4) 296 F.629, which is also cited by this Court.

In fact, the Milam case seems to be about the only case which does support this proposition; while there are quite a number to the contrary, most of which were cited by us in our original brief, and being:

U.S. v. Mills, supra;

U.S. v. Kirschenblatt, supra;

U.S. v. Poller, supra;

U.S. v. Brengle (DC Va.) 29 F.Supp.190;

U.S. v. Boyd, supra;

U.S. v. Moore, (DC Me.) 4 F.2d.600;

Cofer v. U.S. (CCA 5) 37 F.2d.577;

This Court, of course, having said that this search was legal, concedes that as being true in holding it permissible to seize articles connected with another offense not contemplated by the search. This it must do, else it would be confronted with Amos v. U.S., 255 U.S.313, 65 L.ed.654, 41

Sup.Ct.266, holding such seizure unlawful where the search is unlawful.

But we cannot concede this search to have been lawful.

The whole matter narrows down to this:

1. These officers, they say, wanted to search Harris' home and car for two $10,000 cancelled checks.

2. They knew they could not secure a *valid* warrant to search for them, because they had no probable cause which they could present to a magistrate as a basis for their "belief" that they were there.

3. So, as a subterfuge, they secured what purported to be a valid warrant of arrest, based upon complaint which, while positive in form, likewise had no probable cause for its issuance, else Harris would have been indicted on that very charge thereafter.

4. Then, using this socalled valid warrant of arrest, and having entered his home under it, they proceeded to do that for which they could not have secured a valid search warrant.

Is that "good faith?"

Is that a "reasonable" search?

Were these officers justified in "combing and rummaging" Harris' home under these facts?

We assert:

That a careful analysis of the decisions of the Supreme Court and of every Circuit Court in the Nation, sustains the proposition that a thorough search of a man's home can only be upheld by the issuance of a search warrant based upon probable cause supported by oath or affirmation;

That no agent of the Government can substitute his suspicions for the judgment of a magistrate;

That under a warrant of arrest no agent of the Government has any authority to extend his search beyond the person of the defendant and the things which are immediately in the presence of the defendant;

That at that point, no officer or agent of the Government

can extend his search through the bathrooms, the kitchens, the bedrooms, under the mattresses, in the closets, through bureau drawers, and into sealed envelopes, under the guise, as in this case, of looking for evidence of two cancelled checks of the Mudge Oil Company;

That such a search, even though it be related to the alleged means by which the crime was committed, might reasonably expected to be hidden away, and accordingly related to the offense for which the defendant was arrested, cannot be sustained upon that proposition, for the reason that it is a clear invasion of the Constitution and the Amendments thereto.

At the risk of tedious repetition, if the Court's holding in this case be the law, then the Court has opened the door of opportunity for every officer and agent of the Government to by-pass all committing magistrates and all Courts, and you have impliedly said to these men: It is not necessary for you to make an affidavit before you get a search warrant to search a man's home; it is not necessary for you to have probable cause to believe that a crime is being committed in a certain home; all you need to do is to get a warrant for his arrest on any pretext you may devise, arm yourself with the warrant for his arrest only, wait until he gets into his home (and, of course he can't be in all the rooms at the same time, but wherever you may catch him), put your handcuffs on him, hold him in that room for five, six, or seven hours, make your search in every nick and crevass of his home, over his objections notwithstanding, as long as the object of your search is reasonably related to the crime for which you have arrested him, and it matters not if you find anything connected with the crime, if you should by chance find anything in that house concealed or hidden away relating to any crime, State or Federal, just bring it on in and the Courts will see that he goes to the penitentiary; if he should be so unfortunate as to have in his possession a gallon of corn whiskey which had been given to him for fish bait by one of the boys down in the Kiamiche Mountains, bring it on in even though you find it on the top shelf of his pantry in the kitchen, even though it is unrelated to the unlawful possession of two allegedly stolen Mudge Oil Company checks for which you are holding the man under arrest; if you find a counterfeit

bill, in a sealed envelope, which he may have found on the streets that same day, secreted in a sealed envelope in the suit which he wore that day, and which was hanging in his locked closet, take the door off the hinge, search the suit, break open the sealed envelope, get the counterfeit bill which was found by the defendant, and we can still put him in the penitentiary, and do this even though it is wholly unrelated to the two stolen Mudge Oil Company checks which you were looking for and did not find, and for which he was not indicted or tried.

We again assert that this cannot be the law in America.

We reiterate that a search in violation of the Constitution is not made lawful by what it brings to light.

We do not disagree with many of the splendid principles of law announced by this Court, which are sustained by the decisions of all the Circuits and of the Supreme Court.

But the conclusions of the Court in placing its stamp of approval upon the extent of a search as is done in this case, without a search warrant, is in direct violation of the very principles so announced, and as laid down by the Supreme Court of the United States.

Conclusion.

We therefore respectfully submit that the Court having arrived at erroneous conclusions in its decision, should grant a rehearing herein, upon which the search and the seizure here involved should be held to be unreasonable and in violation of the Fourth and Fifth Amendments to the Constitution, and this cause reversed and remanded with directions to dismiss the same.

Respectfully submitted,

HERBERT K. HYDE,
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406 Perrine Building, Oklahoma City, Oklahoma, Attorneys for Appellants.

November, 1945.

Filed November 5, 1945. Robert B. Cartwright, Clerk.

Order Denying Petition for Rehearing.

Eleventh Day, November Term, Wednesday, November 28, A. D. 1945. Before Honorable Alfred P. Murrah, Circuit Judge, and Honorable Eugene Rice and Honorable Royce H. Savage, District Judges.

This cause came on to be heard on the petition of appellant for a rehearing herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

Order Staying Mandate.

Thirteenth Day, November Term, Friday, November 30th, A. D. 1945. Before Honorable Orie L. Phillips, Circuit Judge.

This cause came on to be heard on the application of appellant for a stay of the mandate herein.

On consideration whereof, it is now here ordered that said application be and the same is hereby granted and that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under section 3 of rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

Clerk's Certificate.

United States Circuit Court of Appeals, Tenth Circuit.

I, Robert B. Cartwright, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify the foregoing as a full, true, and complete copy of the transcript of the record from the District Court of the United States for the Western District of Oklahoma, and full, true, and complete copies of certain pleadings, record entries and

proceedings, including the opinion (except full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States) had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said United States Circuit Court of Appeals, No. 3105, wherein George Harris was appellant, and United States of America was appellee, as full, true, and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 10th day of December, A. D. 1945.

(Seal, U. S. Circuit Court of Appeals, Tenth Circuit)

ROBERT B. CARTWRIGHT,
Clerk of the United States Circuit Court of Appeals, Tenth Circuit.